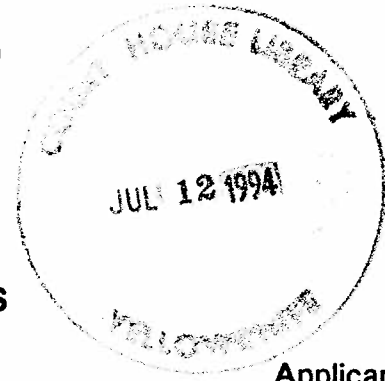


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the  
Criminal Code, s.775;

AND IN THE MATTER OF an  
application for relief in the  
nature of *habeas corpus* with  
*certiorari* in aid;



BETWEEN:

WALTER JOSEPH DESJARLAIS

Applicant

- and -

HER MAJESTY THE QUEEN

Respondent

---

Application for relief in the nature of *habeas corpus* with *certiorari* in aid, granted pursuant to s.775 of the **Criminal Code**.

Heard at Yellowknife on June 17th 1994

Judgment filed: June 17th 1994

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Applicant: Jonathan Tarlton, Esq.

Counsel for the Respondent: Les Rose, Esq.

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**REASONS FOR JUDGMENT**

1           Walter Joseph Desjarlais, a prisoner held in the custody of the Warden of  
the Yellowknife Correctional Centre, asks for relief in the nature of *habeas corpus* with  
*certiorari* in aid.

2           Mr. Desjarlais was remanded into the custody of the Warden pursuant to  
a warrant for committal in Form 8 of the **Criminal Code** on May 24th 1994 by His  
Worship J. Keith Haskins, a Justice of the Peace, at Lutsel k'e in the Northwest  
Territories.

3           The warrant, in its essentials, reads as follows:

WARRANT FOR COMMITTAL

CANADA )  
NORTHWEST TERRITORIES )

Form 8

To the Peace Officers in the  
Northwest Territories and to the  
Keeper of the Yellowknife Corr.  
Centre at Yellowknife

Whereas Walter Desjarlais of the Settlement of Lutsel k'e in the  
Northwest Territories, hereinafter called the accused, has been  
charged that he, on or about the 17 day of March 1994 at  
Yellowknife in the Northwest Territories

- 1) Did committ section 271 CC - Yellowknife
- 2) Did committ section 740(1) CC - Yellowknife
- 3) Did committ section 271 CC - Fort Smith

And whereas:

- 1. the prosecutor has shown just cause why the detention  
of the accused in custody is justified (515(5));

\* \* \*

- 4. the accused has violated or was about to violate his  
promise to appear or undertaking or recognizance and the  
same was cancelled, and the detention of the accused in  
custody is justified or seems proper in the circumstances  
(524(4), 524(8)); ...

THIS IS, THEREFORE, to command you, in Her Majesty's name, to  
take the accused and convey him safely to the said prison, and  
there deliver him to the keeper thereof, with the following precept,  
to be returned to the court at Yellowknife Terr. Court on the 27 day  
of May 1994 at 1.00 o'clock in the afternoon.

I DO HEREBY COMMAND YOU, the said keeper to receive the  
accused in your custody in the said prison and keep him safely there  
until he is delivered in due course of law.

Dated this 24 day of May 1994 at Lutsel k'e in the Northwest  
Territories

"J. Keith Haskins"  
Justice of the Peace

4 This matter came before me today on consent by the Crown, notice having  
been filed (and presumably served) on June 16th 1994.

5 It is agreed by the Crown and the applicant that an order should issue  
pursuant to s.775 of the Criminal Code directing that the applicant be brought forthwith  
before a Judge of the Territorial Court of the Northwest Territories at Yellowknife for  
purposes of a hearing as required by s.515 of the Code to determine whether or not the  
applicant shall be granted judicial release pending further proceedings against him on the  
outstanding criminal charges referred to in the warrant.

6 Section 775 of the Criminal Code states:

775. Where proceedings to which this Part applies have been  
instituted before a judge or court having jurisdiction, by or in  
respect of a person who is in custody by reason that he is charged  
with or has been convicted of an offence, to have the legality of his  
imprisonment determined, the judge or court may, without  
determining the question, make an order for the further detention of  
that person and direct the judge, justice or provincial court judge  
under whose warrant he is in custody, or any other judge, justice or  
provincial court judge, to take any proceedings, hear such evidence  
or do any other thing that, in the opinion of the judge or court, will  
best further the ends of justice.

7 It is apparent that the warrant, under which the applicant has been held in  
custody since May 24th 1994, expired on May 27th 1994, when he was to have been  
brought before a Judge of the Territorial Court at Yellowknife. The applicant has  
consequently been detained in custody since that time without lawful authority, no such  
authority having been shown for his continued detention beyond May 27th 1994.

8 This is therefore an appropriate case in which to grant the relief requested,  
in the nature of *habeas corpus*, subject always to the provisions of s.775 of the Criminal  
Code.

9 A transcript of the proceedings which took place at Lutsel k'e when the  
warrant was issued clearly shows that no hearing was held under s.515 of the Criminal  
Code at that time. Instead, an adjournment was granted at the request of the Crown,  
pursuant to s.516 of the Code:

516. A justice may, before or at any time during the course of any  
proceedings under section 515, on application by the prosecutor or  
the accused, adjourn the proceedings and remand the accused to  
custody in prison by warrant in Form 19, but no adjournment shall  
be for more than three clear days except with the consent of the  
accused.

10 As s.516 requires, a warrant should have issued in Form 19 of the Criminal  
Code, not in Form 8. This would have better enabled the officials at the Yellowknife  
Correctional Centre to appreciate that there had not been a committal pursuant to s.515  
and that the applicant was required to appear in court again on May 27th 1994 pursuant  
to s.516.

11 Had those officials carefully read the warrant, they should have noticed that  
it gave them authority to hold the applicant only until May 27th 1994 and no longer. Use  
of the wrong form of warrant may have been somewhat confusing; but it should not  
have presented any problem if the warrant had been carefully scrutinised, which it  
evidently was not.

It is true that the warrant was evidently not completed with the care  
required as to the statement of the offences charged and as to the names of the  
institution and court to which it refers; and it is likewise true, as I have mentioned, that  
the wrong form was used by the Justice of the Peace. Be these deficiencies as they may,  
the crucial error occurred when the requirements of the warrant (plainly expressed as they  
were) as to the return of the applicant before the Territorial Court on May 27th 1994  
were overlooked or ignored by the officials responsible for that action at the Yellowknife  
Correctional Centre.

13

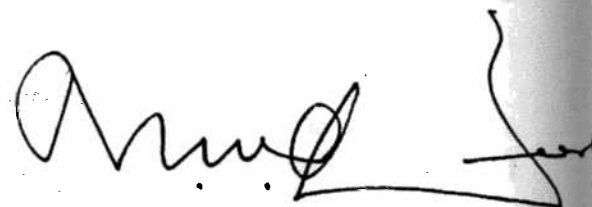
My task on this application is a limited one: to correct the error within the  
framework of law provided by the Criminal Code and, more particularly, s.775. However,  
that such an error could occur is sufficiently a matter of concern that I have directed  
Crown counsel, Mr. Rose, to transmit a copy of these reasons for judgment to the  
Attorney General of the Northwest Territories, within whose responsibility, as I  
understand, lies the administration of the Yellowknife Corrections Centre and the  
administration of Justices of the Peace.

14

An order shall forthwith issue pursuant to s.775 of the Criminal Code  
commanding the Warden of the Yellowknife Corrections Centre to deliver the applicant  
into the custody of the Royal Canadian Mounted Police for escort to attend before the  
presiding Judge of the Territorial Court of the Northwest Territories at the Court House  
at Yellowknife on Tuesday, June 21st 1994, at the hour of 10 a.m., or as the Judge may  
otherwise direct, to be dealt with according to law. The order shall also direct the Royal  
Canadian Mounted Police to carry out the escort above mentioned.

15           **Mr. Jonathan Tarlton of counsel for the applicant and Mr. Les Rose of Crown counsel are to be commended for having brought this matter expeditiously before the Court. Their conduct of the matter is in accordance with the best traditions of the Northwest Territories Bar and deserving of commendation.**

16           **Counsel may see me at short notice by appointment if there is any difficulty in settling details of the order above outlined.**



**M.M. de Weerd  
J.S.C.**

**Yellowknife, Northwest Territories  
June 17th 1994**

**Counsel for the Applicant:       Jonathan Tarlton, Esq.**

**Counsel for the Respondent:    Les Rose, Esq.**

CR 02633

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