

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN,

Respondent,

- and -

ROBERT ROY FABIAN,

Appellant

21-NOV-1974

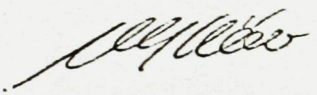
REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE W. G. MORROW

This matter came on before me at Fort Resolution. The appeal was from a sentence imposed by Justice of the Peace R. F. Manderfield. The appellant had been convicted of common assault under Section 245(1) of the *Criminal Code* and sentenced to six months imprisonment together with a further period of three years probation. At the appeal hearing, based on the material before me, I saw fit to allow the appeal in part, reducing the sentence to four months imprisonment and reducing the period of probation to one year. In argument both counsel asked me to reduce my judgment to writing because of confusion that had come up in the Justice of the Peace and Magistrate's Court as to the effect of Section 663(1)(b). The question was as to whether the reference to two years in this section represented a limit on the period of probation open to the Court or whether it was descriptive of the imprisonment time limit in the event probation was to be directed as well.

Under section 663(1)(a) upon an accused being convicted, and where there is no minimum punishment, the Court may suspend the passing of sentence and direct that he be released upon conditions prescribed in a probation order.

When section 663(1)(b) is examined it is in its contemplation that probation may be given in addition to a fine or imprisonment but not in addition to both: *R. v. Smith* (1972) 7 C.C.C. (2d) 468. But does the language permit of an unlimited probation. It states that "in addition to fining ... or sentencing ... (and this whether the imprisonment be for default in payment of a fine or otherwise)" the Court may ... "for a term not exceeding two years, direct that the accused comply with ..." I cannot read this to mean either that for a period of two years the Court may hold up granting unlimited probation nor can I read it as meaning that probation can be additional only in cases where the sentence imposed is under two years. It seems to me that the full natural and ordinary meaning is to limit the period of probation to two years additional to the fine or imprisonment.

The appeal is allowed in part as set forth above without costs.



W. G. Morrow
Fort Resolution, N.W.T.
21 November 1974

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 for the Appellant
O. J. T. Troy, Esq., Q.C.,
 for the Crown