

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN,

Complainant

and

KEITH HOLLISTER PARCHER,

Defendant.

ORAL JUDGMENT OF THE HONOURABLE  
MR. JUSTICE W. G. MORROW  
PRONOUNCED AT YELLOWKNIFE, N.W.T.  
ON WEDNESDAY OCTOBER 3, 1973.

I will now give my judgment.

The accused, Keith Hollister Parcher stands charged that he on or about the 4th day of May, 1973, at or near Yellowknife in the Northwest Territories firstly did unlawfully cause bodily harm to Harry Prizibill, contrary to Section 245(2) of the Criminal Code.

Secondly, on or about the 4th day of May, 1973 at or near Yellowknife in the Northwest Territories did unlawfully assault Guy Vincent Demaine, a Peace Officer, engaged in the lawful execution of his duty, contrary to Section 246(2)(a) of the Criminal Code.

Thirdly, on or about the 4th day of May, A.D. 1973, at or near Yellowknife in the Northwest Territories did unlawfully escape from lawful custody at the Yellowknife Correctional Centre, contrary to Section 133(1)(a) of the Criminal Code.

During the last three days I have heard evidence and argument on this case. The evidence to me seems clear in most respects, in fact surprisingly clear considering the confusion that must have been going on at the Yellowknife Correctional Institute at the time in question. It would appear that Messrs. Scarbro, Prizibill and Demaine, staff officers of the Yellowknife Correctional Institute, which at the time was a minimum security jail facility near Yellowknife, were on duty on what they call the graveyard shift, starting on May 3rd at midnight and going through to the early morning of May 4th, 1973.

The man in charge was Scarbro, and the other two were under his control and orders.

Some time after midnight in the early morning of May 4th, 1973, as a result of a noise which was heard over the intercom Messrs. Prizibill and Scarbro proceeded to make an investigation. They proceeded down a hallway after unlocking and locking themselves through a security door, and eventually ended up in the vicinity of the gym. I do not propose to discuss every detail but will mainly concentrate on what I consider to be the important facts with respect to this accused only.

Prizibill was in advance, Scarbro having been slowed up by directing some inmate who was out in the corridor to go back into his dormitory. He noticed that the padlock hasp was broken off the gym door. The light that he noticed shining under

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the door went off. He proceeded to open the door, and turned the light on. He did not see anyone at first, but eventually he noticed a group of inmates, some of whom he was able to identify. There were two of them that had, what appeared to him, to be pillowcases with eye holes cut in them, placed over their heads. One of them was a tall slender person who was caucasian as he called it, the other one was a very short person. Mr. Prizibill said that there was sufficient tear in the pillowcase for him to recognize this man described as the tall caucasian person as the accused Parcher. When he was asked what was going on, this person's reply was something like, "This is it. We are taking over.", or words to that effect.

Mr. Prizibill identified this man, both from what he saw of his face and from the voice and by the man's stature, as being the accused. He also indicated that later on in the course of the ensuing scuffle or scuffles, he tugged on the pillowcase and that assisted him in his identification of the accused.

The other witnesses, through their limited view as the pillowcase moved and shifted on the person, also said that it was the accused.

I accept their evidence as a reliable identification of the accused.

Almost immediately after the remarks that I referred to a moment ago, the accused struck Prizibill two or three times

with a 2" by 4", quite a long 2" by 4", which was marked as an exhibit in these proceedings. As a result of at least the second blow and perhaps a third blow to the back of the head of Mr. Prizibill, there was injury caused, and I accept the explanation of Mr. Prizibill that the difficulty he still experiences with the back of his head, was to some extent the direct result of one or either of the blows from that 2" by 4".

Mr. Prizibill then attempted to get away by running down the hallway towards the security door, and he was followed by the others in pursuit. Near the vicinity of this door Mr. Prizibill was brought down to the ground, or to the floor by other inmates. Which door incidentally was at that point in time being opened by Mr. Demaine, who was following his instructions, and watching to see what was happening. While in that position certain assaults were committed on him. He did observe the accused pass by, with a hatchet-type of tool in his hand, raised above his head. It is the same tool that he describes seeing in the gym after the 2" by 4" length was used to strike him. He observed Mr. Demaine grapple with the arm holding this hatchet or hammer-type of article. Mr. Demaine says in his evidence that he was in fear when he saw the menace coming towards him by this group of people, he saw a man with a hatchet raised, he was coming right at him, and he attempted to protect himself by grabbing with both hands this man's upraised arm.

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On my view of the evidence, it constitutes an act or a gesture within the meaning of the term assault, as used in the Criminal Code, and I accordingly am satisfied that the accused Parcher did commit an assault as charged on Guy Vincent Demaine.

I should observe that throughout, the witness Scarbro in very many relevant details corroborated the testimony of the other two members of the correctional staff.

Throughout all of the events of that early morning the accused Parcher was one of the persons most prominent in the efforts to take over the correctional institute.

On my observation of the evidence, Mr. Parcher along with others broke out of their lawful bounds when they came out of their dormitories where they were required to remain at night, at that hour. They broke out by being party to the broken lock on the gym. They were particularly outside the bounds when they proceeded through the security door and removed keys from the key safe, as they call it, and let others out. By his remarks, when he said, "This is it. We are taking over.", Parcher indicated clearly his intention, and that of the others, that he and they were asserting power over the custodians. The subsequent acts of locking the three staff members out of the centre are all part of the same general event.

In my opinion by putting the custodians in a position

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where they were, if not prisoners, they were at least in fear of becoming prisoners, and by eventually putting them outside the door and directing them off the premises of the correctional institute the inmates, including Parcher had deprived the lawful custodians of their normal custody and control over these inmates.

In my opinion this constitutes an escape from lawful custody within the meaning of Section 133(1)(a).

I find the evidence surprisingly clearcut despite the confusion that the witnesses must have encountered that early morning and I was particularly impressed by the evidence of Mr. Prizibill with respect to the identification of the accused.

Accordingly I find the accused guilty of all three counts as charged.

Now what about sentence gentlemen?

(Sentence spoken to).

Would you stand up Mr. Parcher.

Mr. Parcher, you live in a democratic country that is proud of its free institutions. It is a pretty tolerant country. It gives people who have grievances many ways of expressing themselves through politics, through newspaper articles, by speeches and so on. When you found yourself in an institution as you did on May 3rd and 4th, 1973, you did not have to take the law into your own hands to present your grievances. You were the Chairman

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of the Grievance Committee. You have been allowed -- even within that institution -- the democratic right to talk to your custodians and lodge complaints. Now if you were not getting results from them, there are other ways that persons can work things out as we know from the hearing involving this same institution which I had not so long ago. We have a very alert press, news media, that are very quick to pick up complaints from people like you, if they have any validity, and they get voiced and acted upon. There are lawyers, legal aid officers, probational officers, many ways you can express yourself, but you destroy the whole function of a minimum security institution when you start taking the law into your own hands. People like Scarbro and Prizibill and Demaine are unarmed, they have no weapons, except a key, and you abused the very freedom that is given to you in that type of institution when you did as you did on the 3rd and 4th of May. This was very foolish and I am afraid that sympathetic as I am to people who are in trouble, I think I am known to be sympathetic in my sentencing, I do not consider that this is a light type of series of offences that you have been found guilty of here today.

I want you to understand that in this country force, assault on the custodians, employees of custodian institutions and policemen, sheriffs, and so on will not be tolerated and must not be tolerated, if our free institutions are to remain free, and you are one of the ones who will suffer the most if the pendulum swings the other way and we get a different type of society.

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I want to point out in sentencing you on these three charges I am leaning as favourably as I can towards you when I give these sentences.

With respect to Count #3, that is the one involving the escape, I am sentencing you to 18 months in the Prince Albert Penitentiary.

With respect to Count #1, that is the assault causing bodily harm, I sentence you to three years consecutive to Count #3, and with respect to Count #2, 1 year concurrent with Count #1.

Now is that clear gentlemen:

MR. TROY:                   Yes My Lord.

MR. JORDAN:                Yes My Lord.

HIS LORDSHIP: Mr. Parcher, you are still young enough to start over, but you had better learn. You may sit down.

W. G. Morrow.

Yellowknife, N.W.T.  
October 3, 1973.

Counsel: O.J.T. Troy, Q.C. for the Crown

A. Jordan, for the Defence.