

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- VS -

KATHI NICKEL

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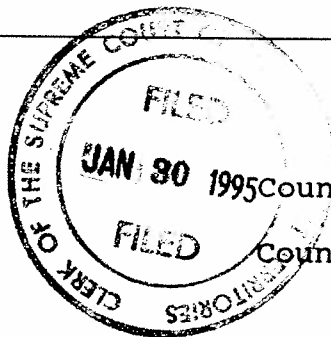
Transcript of the Reasons for Sentence delivered by The Honourable Mr. Justice J.Z. Vertes, sitting at Yellowknife, in the Northwest Territories, on January 26th, A.D., 1995.

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APPEARANCES:

MR. L. ROSE:

MR. T. BOYD:



Counsel for the Crown

Counsel for the Defendant

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(CHARGE UNDER SECTION 334(a) of the CRIMINAL CODE)

1 THE COURT: The accused, Kathi Nickel, has been  
2 convicted on an indictment that during a period of  
3 time between January 1st, 1992, and July 31st, 1992,  
4 she stole money, the property of the Royal Canadian  
5 Legion Branch here in Yellowknife, of a value  
6 exceeding \$1000.

7 In my opinion, the evidence was overwhelming.  
8 The evidence revealed that during the time period in  
9 question, there were a series of discrepancies between  
10 cash collected and deposits made which break down into  
11 two categories:

12 First, discrepancies in terms of cash collected  
13 and reported by Miss Nickel totalling \$3,618.69, and  
14 then certain missing cash deposits totalling  
15 \$8,128.25.

16 Ms. Nickel was employed by the Royal Canadian  
17 Legion starting in January of 1992 as a part-time  
18 assistant manager. Her responsibilities entailed cash  
19 control and accounting. She was responsible for  
20 tabulating the daily receipts from the bar operations  
21 of the Royal Canadian Legion. She was responsible for  
22 handling this money. She was responsible for  
23 reconciling it. She was responsible for making the  
24 cash bank deposits.

25 During the course of her employment, the  
26 discrepancies and problems arose, and eventually she  
27 was terminated from her employment.

1           It is unclear to me as to why the matter took so  
2 long coming to trial, but after two days of evidence  
3 the jury has returned a verdict of guilty.

4           Ms. Nickel is 33 years old. From what I am told,  
5 she has a good education. She is capable of holding  
6 down responsible employment. But I have also been  
7 told that she has a criminal record; a record that,  
8 unfortunately for her, reflects a pattern of conduct,  
9 conduct reflecting dishonesty and deceit.

10           In 1984 she was convicted of the offence of false  
11 pretenses and given a suspended sentence and  
12 probation.

13           In 1986 she was convicted of theft of a value  
14 under \$1000 and given what appears to be a nominal  
15 fine.

16           In 1991 she was convicted here in Yellowknife of  
17 what appeared to be six charges of fraud. She was  
18 fined in each case and she was put on probation for a  
19 period of two years. This was in July of 1991;  
20 therefore, at the time when she was employed by the  
21 Legion and committed the acts for which she has now  
22 been convicted, she was on probation. That, to me, is  
23 a highly aggravating factor.

24           Furthermore, subsequent to that, and while  
25 awaiting trial on these charges, she was convicted of  
26 the offence of making false claims for unemployment  
27 insurance. The allegation was that she claimed

1 falsely that she was not working from the months of  
2 January through July of 1992. For that, she was  
3 convicted in September of 1994, after entering guilty  
4 pleas, and sentenced to serve a period of two months'  
5 incarceration.

6 This record, as I said, unfortunately reflects  
7 very badly on Ms. Nickel's character.

8 The aim of the criminal law is, of course, the  
9 protection of the public. That means whether the  
10 public are individuals on the street, or whether it's  
11 some organization like the Royal Canadian Legion.

12 There are a number of well-known factors that  
13 must be taken into account when it comes to sentencing  
14 anyone for a criminal offence. They are the  
15 rehabilitation of the offender, and whatever prospects  
16 there may be for reformation, deterrence of the  
17 offender from a repetition of this type of conduct,  
18 and deterrence of others from similar types of  
19 conduct.

20 We do not, much to contrary opinion, punish  
21 people simply for the sake of punishment.

22 In this particular case, obviously there is no  
23 indication of violent behaviour on the part of Ms.  
24 Nickel, and ordinarily incarceration would be  
25 considered only as a last resort in cases of  
26 non-violent offenders.

27 The factor of rehabilitation is always to be

1 considered and is usually weighted very heavily in  
2 favour of the offender when someone is before the  
3 Courts for the first time, or if they're young, if  
4 they don't know any better, and if it can be said that  
5 the offence is out of character for them.

6 Unfortunately, as I have just outlined, the  
7 record of the accused in this case speaks against  
8 emphasizing the factor of rehabilitation.

9 She has been previously convicted of similar  
10 types of offences.

11 She is obviously a capable, intelligent  
12 individual, thought worthy to be employed by the  
13 Legion, to be entrusted with handling money, and yet  
14 that trust has been violated.

15 In terms of personal deterrence again, I must  
16 give consideration to this factor, especially when the  
17 criminal record reveals, as it does, a pattern of  
18 conduct, a pattern of similar behaviour. My only hope  
19 is that after this experience, perhaps Ms. Nickel will  
20 finally see the light, as it were. There is no reason  
21 why she could not put her life back together again and  
22 become an upstanding citizen once more. But because  
23 of the nature of the crime, I must give serious  
24 consideration and emphasis to the principle of general  
25 deterrence.

26 This is, as Mr. Rose indicated in his  
27 submissions, a crime that we call a "breach of trust",

1 and in many ways these types of crimes are far more  
2 insidious than some random act of violence. The very  
3 fact that Ms. Nickel was hired to carry out a job of  
4 serious responsibility, entrusted with the control and  
5 accountability for money taken in by the Legion, means  
6 that there was trust reposed in her. It is only  
7 because people have skills, people have certain  
8 degrees of intelligence, that they are able to get  
9 into these types of positions. When people abuse the  
10 trust reposed in them, then the law looks at it very  
11 seriously because, to put it bluntly, it sets a bad  
12 example for everybody else.

13 There are lots of people in this society that  
14 don't have the opportunities that Ms. Nickel had to  
15 have employment, to be employed in an inside job  
16 without heavy lifting, as they say, to be able to use  
17 her mind and skills in a productive fashion, and then  
18 to abuse that trust I think undermines whatever we try  
19 to teach the young people in this society that hard  
20 work and intelligence will get you ahead; that's why  
21 the law looks at it seriously. It shows a great deal  
22 about one's character, and unfortunately, in this  
23 case, what it reveals is not good. And also for that  
24 reason, because there is an emphasis on deterrence,  
25 because others who might be inclined to take advantage  
26 of their positions of trust, to line their own  
27 pockets, have to know that the law deals with these

1 types of offences seriously.

2 It is only in the extraordinary case, and only in  
3 the rarest of circumstances that a person convicted of  
4 this type of crime would not be sent to jail.

5 It does not comfort me or anyone else in my  
6 position to have to send people who could be otherwise  
7 valuable contributing members of society to jail for  
8 any period of time, but to some extent, the public  
9 confidence in the system of justice would be sorely  
10 shaken, were people who take such advantage not  
11 punished seriously.

12 I have considered all that has been said. I must  
13 say Ms. Nickel that I think your counsel did  
14 everything possible on your behalf. I think he is to  
15 be commended for the work he has done during this  
16 trial, and in speaking on behalf of sentence for you,  
17 but there are serious aggravating circumstances here.

18 As I said, this is a breach of trust. It is a  
19 crime that can only be committed by someone who has  
20 that trust reposed in them.

21 The theft revealed a certain systematic and  
22 premeditated course of conduct, and I find it  
23 aggravating the fact that you had been before the  
24 Courts on prior occasions for similar types of  
25 offences, and indeed you were even on probation during  
26 this period of time, and yet you engaged in this  
27 conduct.

1           For those reasons, I have no alternative but to  
2           impose a period of incarceration in this case. Will  
3           you please stand.

4           Ms. Nickel I hereby sentence you to serve a term  
5           of imprisonment of 12 months. Under the  
6           circumstances, there will be no fine or surcharge.

7           I have considered the question of compensation to  
8           the Legion. Mr. Boyd makes the point that the jury  
9           could have convicted you either for the discrepancies  
10          in the cash summaries, or for the missing deposits, or  
11          for both. We do not know exactly what evidence the  
12          jury accepted. I think in many ways it would be  
13          illogical to assume that the jury would think you were  
14          responsible for cash discrepancies without being  
15          responsible for the missing deposits or vice versa,  
16          but be that as it may, I must at least give some  
17          benefit of the doubt on that point in terms of the  
18          overall amount that you should be held responsible for.

19          I am going to order that you pay compensation. I  
20          am going to issue a compensation order under Section  
21          725 of the Criminal Code in the sum of \$5,000 in  
22          favour of the Royal Canadian Legion. That will be, in  
23          effect Ms. Nickel, a judgment against you, and the  
24          Legion can, if they wish, pursue whatever civil  
25          remedies are at their disposal to try to collect that  
26          money. You may sit down.

27          I want to thank both of you counsel for your



1 organization and presentation of the case. Is there  
2 anything else we need to deal with?

3 MR. ROSE: Not from the Crown, My Lord.

4 MR. BOYD: Not from defence, sir.


5 THE COURT: Before we close Mr. Clerk, could I  
6 have the exhibit list? Since we have a lot of paper  
7 in this case, I am going to direct that all of the  
8 original exhibits be maintained by the clerk, except  
9 for Exhibit 5 which is that group of 21 manila  
10 envelopes containing the original documentation  
11 financial records. I am going to direct the clerk  
12 that Exhibit 5 be given back to the Crown attorney,  
13 that the Crown maintain custody of that particular  
14 exhibit until the end of the appeal period, and if no  
15 appeal is filed, then that exhibit can be returned to  
16 the Royal Canadian Legion, since they may need it for  
17 their record keeping.

18 All of the additional volumes that were prepared  
19 by the Crown and used for the assistance of myself and  
20 the jury can be given back to the Crown and they can  
21 dispose of it as they wish.

22 Thank you gentlemen, we'll close Court.

23 **(AT WHICH TIME PROCEEDINGS CONCLUDED)**

24  
25 Certified Pursuant to Practice Direction #20  
dated December 28, 1987.

26   
27 Karen Steer,  
Court Reporter