

CR 03365

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

WILLIAM TERRY TAUREAU

Respondent

MEMORANDUM OF JUDGMENT

The accused in this case pleaded guilty before a Justice of the Peace in Fort Good Hope, Northwest Territories, to charges under sections 253(a) and 253(b) of the Criminal Code, both arising out of the same event.

The accused was unrepresented at the time. It appears that it was not brought to the attention of the presiding Justice of the Peace that an accused cannot be convicted under both sections 253(a) and (b) when the offences occurred at the same time: *R. v. Houchen* (1976), 31 C.C.C. (2d) 274 (B.C.C.A.); *R. v. Boivin* (1976), 34 C.C.C. (2d) 203 (Que. C.A.). This is also reflected in the usual practice of the Crown, which is to indicate to the Court when guilty pleas are offered that it is seeking a conviction on one of the counts only.

In this case, the accused was convicted on both counts and ordered to serve concurrent sentences of imprisonment of 60 days intermittently. No probation was ordered. Section 732(1) of the Criminal Code, which came into force on September 3, 1996, requires that probation be ordered where an intermittent sentence is ordered. The section reads as follows:

732.(1) Where the court imposes a sentence of imprisonment of ninety days or less on an offender convicted of an offence, whether in default of payment of a fine or otherwise, the court may, having regard to the age and character of the offender, the nature of the offence and the circumstances surrounding its commission, and the availability of appropriate accommodation to ensure compliance with the sentence, order

- (a) that the sentence be served intermittently at such times as are specified in the order; and
- (b) that the offender comply with the conditions prescribed in a probation order when not in confinement during the period that the sentence is being served and, if the court so orders, on release from prison after completing the intermittent sentence.

The Crown has brought on this appeal in order to have the two matters referred to above rectified. Crown counsel asks that the conviction under section 253(b) be quashed and a judicial stay of that charge entered. She also asks that the appropriate probation be ordered to accompany the intermittent sentence order, but does not seek that the term of probation be more than what is required under section 732(1) and seeks only the mandatory conditions of probation. As the Notice of Appeal was filed out of time, there is also an application to extend the time for filing and service of same.

Mr. Taylor, a Court Worker, appeared and advised the Court that he had spoken to the accused and confirmed that the accused had received notice of the Crown's application and the appeal and that the accused took no issue with the relief requested.

The relief sought is really no more than is required to comply with the law.

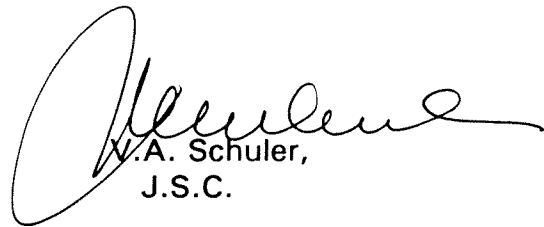
Accordingly, the application to extend the time for filing and service of the Notice of Appeal is granted. The time is extended to February 2, 1997, the date the accused was in fact served.

The appeal is allowed. The conviction under section 253(b) is quashed and that charge is stayed.

The 60 day intermittent sentence on the section 253(a) charge will stand as per the order of the Justice of the Peace. As the Crown did not seek a period of probation to extend beyond the time that the intermittent sentence is being served, I order only that the accused, when not in confinement during the time that the intermittent sentence is being served, comply with conditions of probation, being the mandatory conditions under section 732.1(2) as follows:

- (a) keep the peace and be of good behaviour;
- (b) appear before the court when required to do so by the court; and
- (c) notify the court in advance of any change of name or address, and promptly notify the court of any change of employment or occupation.

I thank Crown counsel and Mr. Taylor for their assistance in bringing this matter before the Court on an expedited basis.



V.A. Schuler,
J.S.C.

Dated at Yellowknife, Northwest Territories
this 13th day of February 1997

Scot Taylor, of Mackenzie Court Workers Services, spoke on behalf of the Respondent

Counsel for the Appellant: Loraine Minish-Cooper

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HONOURABLE JUSTICE V.A. SCHULER

