

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

PETER TAMBOUR

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

MEMORANDUM OF JUDGMENT

- [1] The applicant (and proposed appellant) was charged with the summary conviction offence of “failing to appear” contrary to s.145(5) C.C. On October 22, 1998 he was convicted by the Justice of the Peace and sentenced to sixty days imprisonment, consecutive to other sentences. A notice of appeal was filed on his behalf on June 25, 1999. In that document he requests an order extending the time for filing an appeal, and an order quashing the conviction.
- [2] The notice of appeal does not state the grounds of the appeal with particularity, as required by Rule 111 and Form 8 of the Criminal Procedure Rules. However, the contents of the factum indicate that the complaint is improper procedural conduct by the presiding Justice of the Peace.
- [3] I direct myself firstly, though, to the application for an extension of time within which to file the appeal.
- [4] Rule 110(1) states that an appellant must give notice of appeal within 30 days after the day he was sentenced. Both s.815(2) of the Criminal Code and Rule 110(2) of the Criminal Procedure Rules authorize the Court to extend this time period in an appropriate case.
- [5] An extension of time is not granted willy-nilly. The Court must, in exercising its discretion on such an application, consider whether justice requires the extension.

Appeals are by nature exceptional, and there ought to be good reason to extend the time for appealing a Court's decision. As stated by my colleague Schuler, J. earlier this year:

The question of extension of the time is not to be treated lightly; nor should it be assumed that a Court will as a matter of course grant an extension.

R. v. Hope
[1 9 9 0]
N.W.T.J. No.
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- [6] Also see *Corrigan v Scott* [1990] N.W.T.J. No. 42, *R. v. Beaverho* [1995] N.W.T.J. No. 77, and *R. v. Antoine* [1997] N.W.T. R. 282.
- [7] These cases show that among the factors to be considered by the Court in exercising its discretion are a) whether the applicant had shown, within the appeal period, a *bona fide* intention to appeal, and b) whether the applicant has accounted for the delay.
- [8] On the present application there is no affidavit evidence, no notice of motion. See Part 3 of the Criminal Procedure Rules regarding these requirements.
- [9] There are, however, factual allegations contained within the applicant's filed factum. (These are not contested by the Crown). The only factual allegations relevant to the application for an extension of time are:
- i) the applicant was convicted and sentenced on October 22, 1998;
 - ii) on December 4, 1998 (i.e. 44 days after sentence was imposed) he applied to Legal Aid for assistance in appealing the conviction.
- [10] It is noteworthy that there is an absence of any evidence regarding:
- a) any intention to appeal within 30 days of being sentenced;
 - b) the reason for the delay in contacting Legal Aid or in taking any other step;
 - c) the reason for the delay between December 4, 1998 and June 25, 1999 (6 1/2 months) in filing the notice of appeal or in making application for an extension of the appeal period.
- [11] In the absence of such evidence, the Court is precluded from finding merit in the application.
- [12] The Court's Rules with respect to filing periods, filing requirements and evidentiary requirements ought to be followed, absent justification for not doing

so. Also, there is a certain incongruity in this procedurally deficient effort to launch an appeal which itself alleges procedural deficiencies.

[13] For these reasons, the application for an extension of time within which to give notice of appeal is denied.

J. E. Richard
J.S.C.

Dated at Yellowknife, NT this 23rd day of July, 1999.

Counsel for the Applicant:	Joan Mercredi
Counsel for the Respondent:	Ari Slatkoff