R. v. Wainman, 2000 NWTSC 71 CR 02009

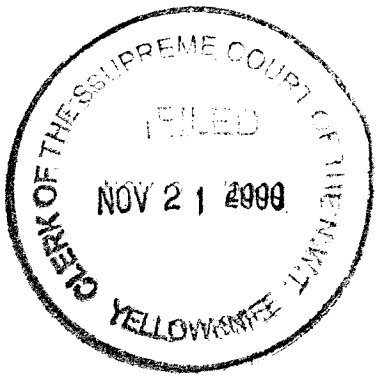
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

KURT WAINMAN



Transcript of a Ruling on an Appeal from Sentence delivered by The Honourable J.Z. Vertes, in Yellowknife, in the Northwest Territories, on the 26th day of October, A.D. 2000.

APPEARANCES:

MS. B. SCHMALTZ: On behalf of the Crown

MR. H. LATIMER: On behalf of the Defence

Charge under s. 267(b) C.C.

THE COURT: In the Wainman appeal, the appellant appeals a sentence of 15 months imposed upon his conviction after trial on a charge of assault causing bodily harm.

The sentencing judge referred to the offence as a retaliatory beating in anger. The appellant kicked the victim in the head and broke his jaw. In his judgment, the sentencing judge recognized the prevalence of crimes of violence fueled by the excessive consumption of alcohol. He referred to the appellant's record of past convictions and he emphasized deterrence. In all of this there was a reasonable basis in the evidence for the sentencing judge's findings.

The appellant's counsel makes two points which I think are worthy of comment: One is regarding the fact that because the Crown had proceeded summarily the maximum sentence is one of only 18 months; and the other is the fact that notwithstanding the appellant's record, which includes five prior assault convictions, this was his first substantial period of incarceration.

The potential maximum sentence is always a factor to take into account in determining the appropriate range for a sentence as is the fact that the offender has not previously served a substantial jail term. Those are relevant factors but they are only two of

numerous factors that go into the process. The overriding consideration must always be: What is the appropriate sentence for this offender in the circumstances of this offence?

The Supreme Court of Canada has repeatedly admonished appellate courts that the determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender in the circumstances of the offence while at all times taking into account the needs and current conditions of and in the community. The discretion of a sentencing judge must not be interfered with lightly. The Supreme Court has held that a variation of sentence should only be made by an appellate court if a sentence imposed is clearly unreasonable or demonstrably unfit. Unreasonableness in the sentencing context refers to an order falling outside the acceptable range of sentences under similar circumstances.

Being guided by those principles and considering all the facts and circumstances of this offence, I cannot conclude that the sentence of 15 months is demonstrably unfit. The appeal is dismissed.

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Certified pursuant to Practice Direction #20 dated December 18, 1987.

A Wright

Annette Wright, RPR, CSR(A)
Court Reporter