

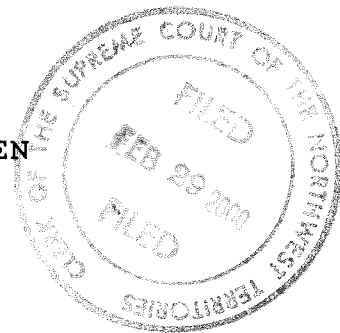
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

NATHANIEL KAMOOKAK

- and -

HER MAJESTY THE QUEEN



Transcript of Reasons denying an application for an extension of time to file a sentence appeal, by The Honourable Justice J.E. Richard, sitting in Yellowknife, in the Northwest Territories, on the 24th day of February, A.D. 2000.

APPEARANCES:

MS. L. COLTON:	On behalf of the Crown
MR. H. LATIMER:	On behalf of the Defence

1 THE COURT: The background to this application
2 is that Nathaniel Kamookak was convicted in
3 Territorial Court on February 18th of 1999, just over
4 a year ago, of several Criminal Code offences and was
5 sentenced on that same date to a total of 27 months
6 imprisonment. Mr. Kamookak wishes to appeal the
7 sentence that was imposed.

8 The difficulty is that the appeal period has long
9 since expired. Rule 110 of the Court's Rules state
10 that the appeal must be taken within 30 days of the
11 date of sentencing. The Criminal Code does provide in
12 Section 815 that the court can grant an extension of
13 time beyond the 30 days within which a particular
14 appeal can be made. The court does then have a
15 discretion to grant an extension of time in an
16 appropriate case.

17 In deciding whether to exercise that discretion,
18 the court usually takes into consideration certain
19 specific factors, and these are referred to in the
20 cases cited by counsel:

21
22 1. Whether the applicant has shown within the
23 appeal period a bona fide intention to appeal.

24
25 2. Whether the applicant acted with reasonable
26 diligence or has a reasonable excuse for the
27 delay.

1 3. Whether it is at least arguable that the
2 judgment of the trial judge was wrong or, perhaps
3 expressed another way, whether the appeal has a
4 reasonable chance of success if it is allowed to
5 proceed.
6

7 With these factors in mind, I find that the
8 evidence provided on behalf of Mr. Kamookak on this
9 application is simply insufficient to justify the
10 granting of a time extension in this case.

11 Mr. Kamookak says in his affidavit that he
12 drafted a notice of appeal while he was incarcerated
13 in a federal institution in Alberta.

14 The notice of appeal is dated April 14th, 1999,
15 well after the expiration of the 30-day appeal period.
16 There is no evidence of when he drafted it, when he
17 signed it, when he sent it to Yellowknife, when it was
18 returned to him as being styled in the wrong appeal
19 court. Mr. Kamookak says he instructed his previous
20 lawyer to appeal but there's no evidence of when he
21 did that, nor any supporting evidence from his
22 previous lawyer.

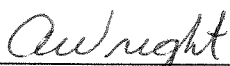
23 Present counsel says he was initially consulted
24 about an appeal in June 1999, a date which, again, is
25 well after the expiration of the appeal period. With
26 the greatest of respect, there is no satisfactory
27 explanation for the delay in filing the application

1 for an extension of time. This application was not
2 filed until February 11th in the year 2000, one year
3 after the date of sentencing.

4 I am not satisfied by the evidence on this
5 application that the applicant has acted with
6 reasonable diligence since being sentenced. For these
7 reasons, the application for extension of time is
8 denied.

9 If there is nothing further then we will close
10 court.

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13
14 Certified pursuant to Rule 723 of
15 the Rules of Court

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18 _____
19 Annette Wright, RPR, CSR(A)
20 Court Reporter
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