

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

DANIEL SCOTT CURTIS

Applicant

- vs. -

HER MAJESTY THE QUEEN

Respondent

Transcript of a Decision by The Honourable Justice J.E.
Richard, at Yellowknife, in the Northwest Territories, on
December 6th, A.D. 2001.

APPEARANCES:

Ms. M. Engley: Counsel for the Applicant

Ms. D. Robinson: Counsel for the Respondent

Charges under s. 253(a), 129(a), 145(3), 264.1(1), 270(1)
Criminal Code of Canada

1 THE COURT: The Applicant, Daniel Scott Curtis,
2 firstly seeks an order extending the time within which
3 he might appeal the sentence imposed upon him in
4 Justice of the Peace Court in Inuvik on June 7th,
5 2001. His notice of appeal and his application for an
6 extension were filed in this Court on September 27th,
7 well beyond the 30-day appeal period.

8 The Court's authority to grant an extension of
9 time within which to launch an appeal is a
10 discretionary authority of the Court as set forth in
11 section 815(2) of the Criminal Code and rule 110(2) of
12 the Criminal Procedure Rules.

13 In previous cases, the Court has indicated that
14 among the factors to be considered by the Court in
15 exercising its discretion are:

- 16 (a), whether the Applicant had
17 shown within the appeal period a
18 bona fide intention to appeal;
19 (b), whether the Applicant has
20 accounted for or satisfactorily
21 explained the delay; and
22 (c), whether the appeal has a
23 reasonable chance of success.

24 The Applicant indicates in his affidavit that
25 within the appeal period, that is, on June 19th, he
26 applied for Legal Aid assistance with the intention of
27 launching a sentence appeal. He attaches to his

1 affidavit a copy of the Legal Aid application form
2 showing that it was received in the Legal Aid office on
3 June 19th. On this evidence, I am satisfied that the
4 Applicant has met the first requirement. That is, I am
5 satisfied that he, indeed, had an intention within the
6 appeal period to appeal the sentence.

7 I regret that I find that the Applicant has not on
8 this application met the second requirement, that is,
9 explained satisfactorily or accounted for the delay
10 after June 19th. The Applicant in his affidavit states
11 that his application for Legal Aid was approved on July
12 6th, 2001, and he attaches to his affidavit a copy of
13 the approval document. That document indicates that
14 legal aid is approved for Mr. Curtis's sentence appeal
15 and names the assigned lawyer. The document also
16 indicates that a copy of the approval was sent to the
17 assigned lawyer, and I note here for the record that
18 the assigned lawyer was not the lawyer representing Mr.
19 Curtis on this application.

20 Also filed in support of this application is the
21 affidavit of Charles Thompson, an associate of the
22 assigned Legal Aid lawyer. Mr. Thompson deposes his
23 affidavit simply on the basis of reviewing the assigned
24 lawyer's file and from a telephone conversation with
25 the assigned lawyer. The presentation of secondhand
26 hearsay evidence in this fashion is less than
27 satisfactory, but, in any event, the assigned lawyer

1 reportedly says he agreed to take on the sentence
2 appeal at the request of the Legal Aid Office on July
3 5th. He says he told Legal Aid at that time that he
4 would not be able to do any work on the file until his
5 return from holidays on July 23rd. He then says that
6 after July 23rd he was of the understanding that all
7 Legal Aid wanted of him was an assessment of the merits
8 of an appeal rather than to proceed with the appeal
9 itself. This seems odd, since Legal Aid's approval
10 document dated July 6th that was sent to him clearly
11 grants legal aid for the sentence appeal. In any
12 event, the assigned Legal Aid lawyer says he did not
13 realize he was authorized to proceed with the appeal
14 until early September.

15 There is no indication in any of the material
16 filed on this application that the assigned Legal Aid
17 lawyer, the Legal Aid Office or the Applicant himself
18 were addressing the existence of a 30-day appeal
19 period. The material does not indicate whether the
20 Applicant followed up with the Legal Aid Office or his
21 assigned lawyer after June 19th.

22 Was the Applicant aware of the 30-day appeal
23 period? Was the assigned lawyer conscious of the
24 existence of a 30-day appeal period? There is an
25 absence of direct information as to what, if anything,
26 was done regarding the proposed sentence appeal to
27 which a 30-day appeal period applied between June 19th

1 and September 27th. The result is that the delay in
2 attending to the proposed appeal after June 19th and
3 more so after July 23rd has not been satisfactorily
4 explained.

5 I turn now to the third factor, whether the
6 proposed appeal has a reasonable chance of success.
7 Mr. Curtis received a global sentence of 14 months'
8 imprisonment for a series of eight related offences
9 over a five-week period in Inuvik earlier this year.
10 Having had the benefit of reading the recitation of
11 facts of those three incidents, which was read to the
12 community JP at the time of sentencing, facts which Mr.
13 Curtis agreed were essentially accurate, and having
14 particular regard to the fact that Mr. Curtis was under
15 court process at the time of the second and third
16 repetitive incidents, my immediate observation is that
17 Mr. Curtis should not have been surprised at all that
18 he came away with a 14-month global sentence. On the
19 face of it, it cannot be said that that sentence is
20 unfit. Given the high standard of review on sentence
21 appeals, I am unable to say that the proposed appeal
22 has a reasonable chance of success.


23 For these reasons, I find there is no merit in the
24 application for an extension of time, and that
25 application is, accordingly, denied. As a result, the
26 appeal is not properly before the Court and the appeal
27 is, accordingly, dismissed. Thank you, counsel.

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MS. ENGLE: Thank you, sir.
THE COURT: You can take Mr. Curtis, Officer.
Thank you.

(AT WHICH TIME COURT ADJOURNED)

Certified pursuant to Rule 723
of the Supreme Court Rules.



Jill MacDonal,
Court Reporter