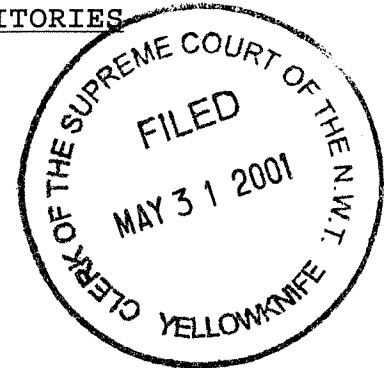


R. v. Ross, 2001 NWTSC 42

S-1-CR2001/001

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

Appellant

- and -

DONALD CHRISTOPHER ROSS

Respondent

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Transcript of the Oral Reasons for Judgment delivered by The Honourable Justice V.A. Schuler, at Inuvik, in the Northwest Territories, on May 15th, A.D. 2001.

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APPEARANCES:

J. O'Halloran, Esq.,

Counsel for the Appellant

R. Gorin, Esq.,

Counsel for the Respondent

1 THE COURT: All right. I will give my decision  
2 now in the matter of the Crown appeal of the sentence  
3 in the Donald Ross case. There is no doubt at all that  
4 the circumstances of the offences to which Mr. Ross  
5 pled guilty were very serious and the situation in  
6 which he placed all those persons involved a very  
7 dangerous one.

8 The Crown submits that the conditional sentence  
9 followed by probation imposed by the sentencing Judge  
10 in this case is unfit because of those circumstances  
11 and because it fails to serve the principles of  
12 denunciation and general deterrence.

13 The Supreme Court of Canada has, I think, made it  
14 clear in the case of Proulx, found at (2000), 140  
15 C.C.C. (3d), page 449, that:

16 "A conditional sentence can  
17 provide significant denunciation  
18 and deterrence if sufficiently  
19 punitive conditions are imposed  
20 and the conditional sentence term  
21 is lengthier than would have been  
22 imposed as a jail sentence. This  
23 is so even where aggravating  
24 factors relating to the offence  
25 increase the need for denunciation  
26 and deterrence."

27 At the sentencing hearing in this case the Crown

1 sought a relatively short six to eight-month jail  
2 sentence, having elected to proceed by summary  
3 conviction. The sentencing Judge chose instead to  
4 impose a conditional sentence of 20 months followed by  
5 three years' probation. He acknowledged that it was a  
6 very difficult case and that the incident was a  
7 dangerous one.

8 A sentencing Judge need not refer to every fact or  
9 every consideration, and I do not think that there can  
10 be any doubt that he was aware that there was a  
11 domestic violence aspect to Mr. Ross's actions.

12 In imposing the conditional sentence, the  
13 sentencing Judge expressed the view that the risk of  
14 reoffending with the conditional sentence order was  
15 less than it would be under the jail sentence asked for  
16 by the Crown.

17 In my view, the sentencing Judge considered all  
18 the relevant factors and carefully crafted a sentence  
19 which he felt, based on the material before him, would  
20 best protect the public and serve the other principles  
21 of sentencing.

22 Certainly, the sentence he imposed is more  
23 onerous, involving, as it does, over four years of  
24 supervision over Mr. Ross than eight months in jail,  
25 which he would most likely have served less than the  
26 full amount of with the usual remission. The length of  
27 the conditional sentence order combined with the

1           probation in this case, in my view, does have a  
2           denunciatory and deterrent aspect to it.

3           I conclude that the sentence in all the  
4           circumstances and considering the standard of review  
5           and the deference to be given to the sentencing Judge  
6           was not demonstrably unfit, save in one respect, and  
7           that is the question of house arrest. In my view,  
8           house arrest does serve a denunciatory and deterrent  
9           purpose and should have been imposed in this case  
10          rather than simply a curfew.

11          As counsel have acknowledged, the 20-month  
12          conditional sentence cannot stand, because the maximum  
13          on each of the three counts was six months. So I,  
14          therefore, vary the conditional sentence to 18 months,  
15          being six on each count consecutive.

16          I also vary the conditional sentence to provide  
17          that during the balance of the conditional sentence  
18          term Mr. Ross shall remain in his home except for the  
19          following purposes: Seeking and engaging in  
20          employment, attending Alcoholics Anonymous meetings,  
21          taking counselling and any other programs recommended  
22          by his supervisor, obtaining medical attention, doing  
23          the community service work ordered and meeting with his  
24          supervisor.

25          So the appeal is allowed to that extent, and  
26          obviously the curfew condition would, then, be struck  
27          and it will be replaced by this house arrest

1 condition.

2 Now, counsel, I think what you should do is take  
3 out an order, a formal order, then, reflecting this and  
4 that can then be appended to the conditional sentence  
5 order that was made originally.

6 Is there anything further that I should deal with  
7 or that I have overlooked?

8 MR. GORIN: Nothing from the Defence.

9 MR. O'HALLORAN: I will have to get, then, from the  
10 Clerk, I take it, later on those conditions again  
11 specifically and then I will have the order drafted for  
12 My Friend to examine?

13 THE COURT: Yes, I think that is the way you  
14 should do it. The alternative would be to simply have  
15 the Clerk endorse the original order, but since this is  
16 an appeal, rather than a variation by the Court that  
17 made the order, I'm not sure that that is the right way  
18 to go about doing it.

19 MR. O'HALLORAN: Right.

20 THE COURT: All right. If there is nothing  
21 further, then, thank you for your submissions,  
22 counsel. Good luck, Mr. Ross, with the sentence that  
23 you are on. We will close court.

24 **(AT WHICH TIME THE ORAL REASONS FOR JUDGMENT CONCLUDED)**

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Certified pursuant to Rule 723  
of the Supreme Court Rules.

*Jill MacDonald*  
Jill MacDonald,  
Court Reporter

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