

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HARVEY RONALD WERNER

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

MEMORANDUM OF JUDGEMENT

[1] Mr. Werner appeals his conviction and sentence with respect to a summary conviction charge tried in the Territorial Court.

[2] On September 3, 2003, Mr. Werner was tried on charges of causing a disturbance and mischief. Both charges arose out of an incident that is one of a series arising out of a longstanding dispute between Mr. Werner and the Town of Hay River. The trial judge acquitted Mr. Werner of the charge of causing a disturbance, but convicted him of mischief. He imposed a fine of \$500.00 and 18 months' probation with various conditions, among them that Mr. Werner not be on the premises of the Hay River Town Hall without authorization in advance from a Town employee.

[3] Mr. Werner was represented by counsel at the trial, but represented himself on this appeal.

[4] Briefly, the facts before the trial judge were that Mr. Werner came into the Town Hall to discuss an issue involving municipal taxes. After discussion with the Town's Senior Administrative Officer (the "SAO"), the issue was still not resolved. Mr. Werner asked for a copy of the tax arrears roll which was posted for public viewing on the bulletin board in the reception area of Town Hall. Because of previous

occasions when Mr. Werner had received documents and then refused to pay for them, the SAO said that he would have to pay for the copy of the roll before it was given to him. Mr. Werner refused to pay in advance and took the tax arrears roll off the bulletin board, saying that he would take it as his copy. The SAO asked him to return it but Mr. Werner refused. The police were called. They asked Mr. Werner to return the roll and he refused again. These events took place inside the Town Hall.

[5] The trial judge found that, considering the Town's duty to post the roll and the manner in which Mr. Werner took possession of it and refused to return it, Mr. Werner had engaged in a course of conduct that amounted to an interference and an interruption in the operation of the ordinary business of Town Hall. Such conduct is mischief pursuant to s. 430(1) (c) of the *Criminal Code*.

[6] Mr. Werner's notice of appeal sets out the following ground of appeal: that the learned trial judge misapprehended the evidence of the appellant and of John Pollard [the SAO] and made an erroneous finding of fact as a consequence.

[7] I find no merit in this ground of appeal. Both Mr. Werner and the SAO testified at trial that Mr. Werner was not happy that he was asked to pay for a copy of the roll before receiving it and that he took the roll from the bulletin board and refused to return it when asked to do so. These were the facts underpinning the finding of guilt and there is no basis on which to find that the trial judge misinterpreted them or erred.

[8] Mr. Werner directed most of his argument on the appeal to the reasons why he felt he was entitled to be at the Town Hall on the date in question and why certain things done by Town employees and the SAO were, in his view, not authorized under the *Cities, Towns and Villages Act*, R.S.N.W.T. 1988, c. C-8. All of this has no relevance, however, to the conviction for mischief, which was based on Mr. Werner's removal of the roll from the bulletin board, which interfered with the Town's obligation to maintain the roll open for public inspection pursuant to s. 26(4) of the *Property Assessment and Taxation Act*, R.S.N.W.T. 1988, c. P-10.

[9] Mr. Werner also argued that he was prevented from making full answer and defence because a tape recorder with which he recorded his interactions with the Town employees and the SAO on the day in question disappeared from his briefcase after his arrest by the police. Although he testified about the tape recording at trial, no argument was made to the trial judge that the absence of the recording impeded Mr.

Werner from making full answer and defence. Moreover, as noted above, Mr. Werner admitted the facts that were essential to the finding of guilt. Thus, there is no reason to believe that the tape recording could have affected the verdict.

[10] Finally, Mr. Werner argued that the trial judge erred in allowing into evidence some of the history of his dispute with the Town. This evidence was relevant, however, to an understanding of the reasons the Town employees and the SAO did some of the things they did and it put the events in context. The trial judge made it clear in his reasons for finding Mr. Werner guilty of mischief that he was not basing his decision on the past history.

[11] For the above reasons, I find that the conviction appeal has no merit and I dismiss it.

[12] On the appeal from sentence, the grounds set out in the notice of appeal are that the period of 18 months' probation is excessive in the circumstances and the probation term that prohibits the Appellant from entering the premises of the Town Hall is excessive.

[13] Mr. Werner argued that the term prohibiting him from entering the premises of the Hay River Town Hall is unreasonable or unconstitutional because it would prevent him from transacting his own business there and attending meetings of Town Council. He relied on a case that he claims was decided in this Court in his favour on that very point. He was, however, unable to produce a copy of the case or provide a citation for it during argument on the appeal. Crown counsel on the appeal advised that he, too, was unable to locate the case described by Mr. Werner.

[14] Mr. Werner, in speaking on his own behalf, relied on the same case before the trial judge. His trial counsel did not refer to it and I infer may not have been aware of any such case. No copy of the case was produced for the trial judge. However, Crown counsel at trial (who was not Crown counsel on the appeal) claimed to be aware of the case and told the trial judge that it overturned a probation condition that Mr. Werner not attend Town Hall on the basis that it restricted his rights under the *Charter*.

[15] I have not been able to locate a copy of the decision referred to by Mr. Werner and I am not convinced that any such decision exists. Crown counsel on the appeal

provided me with a decision in a case involving Mr. Werner and I have also located one other decision that deals with issues similar to what Mr. Werner described. However, neither case says what Mr. Werner and Crown counsel at trial claimed.

[16] In *R. v. Werner*, [2000] N.W.T.J. No. 2, Richard J. of this Court dealt with an appeal by Mr. Werner of his conviction and sentence on two charges of causing a disturbance, again arising out of Mr. Werner's dealings at Town Hall. In that case, Mr. Werner was sentenced to three days' imprisonment followed by 18 months' probation. In reviewing the probation order, Richard J. said the following:

In imposing sentence, the trial judge's primary concern was the protection of the public. In my view, in the circumstances he quite appropriately inserted conditions in the probation order which prohibited the offender from contact with town hall officials, and from attending at the town hall premises except for the purpose of attending a public meeting.

[17] The above passage does not mean that any probation condition that prohibits Mr. Werner from attending at Town Hall must also provide an exception so that he can go there for the purpose of attending a public meeting. Richard J. was dealing only with the probation order that was before him and was not purporting to comment on what conditions could be included in any other probation orders. If Mr. Werner has interpreted the decision to mean that he must always be permitted to attend public meetings on Town Hall premises, he is wrong.

[18] In a second case, *R. v. Werner*, [2001] N.W.T.J. No. 29, Richard J. sat on an appeal from conviction and sentence in a case where Mr. Werner had been found guilty of breach of probation (the same probation order referred to above) and placed on a further term of probation. One of the conditions of the further probation was that Mr. Werner was to post no signs on public display in which he identified by name any particular town employee or the former SAO. Richard J. found that this amounted to a withdrawal of Mr. Werner's constitutional right to freedom of expression without justification and he deleted that condition from the probation order. Richard J.'s ruling applied to that probation condition only.

[19] In the same decision, Richard J. noted that the probation order also prohibited Mr. Werner from attending at Town Hall and that certain exceptions to that prohibition had been included in the order. He did not say that every probation order must include exceptions to a prohibition on attendance at Town Hall.

[20] If Mr. Werner has interpreted either or both of the above decisions to mean that a probation order that prohibits him absolutely from attending at Town Hall is unreasonable or unconstitutional, in my view he is wrong. The decisions do not say that.

[21] Richard J. also stated in the second case referred to above:

Every probation order is an intrusion into the individual's personal freedom. Conditions of the probation order, however, must be reasonable, pursuant to s. 732.1 C.C. It is not reasonable to withdraw the individual's constitutional right to freedom of expression *without justification*, in my respectful view. (Emphasis added)

[22] I adopt those comments. In my view, there was ample justification for the trial judge in this case to restrict the rights that Mr. Werner would otherwise have to attend at the Town Hall. That justification lies in the continuing series of criminal acts he has committed in the last few years during his dealings with Town employees. These include criminal convictions for causing a disturbance, assault and breach of probation. The restrictive conditions of earlier probation orders did not deter Mr. Werner from committing more criminal acts. In the circumstances, the blanket prohibition on his attendance at Town Hall was justified, as was the 18 month probation order as a whole.

[23] The appeal from sentence is therefore dismissed.

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT
this 7th day of March, 2005

Counsel for Her Majesty the Queen: Steven Hinkley
The Appellant, Mr. Warner, appeared on his own behalf.

