

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CECIL SYLVESTER MATTHEWS

Transcript of the Reasons for Sentence delivered by The Honourable Justice S. H. Smallwood, in Yellowknife, in the Northwest Territories, on the 16th day of August, 2013.

APPEARANCES:

Mr. K. Onyskevitch: Counsel on behalf of the Crown

Mr. P. Falvo: Agent for Counsel C. Wawzonek on behalf of the Accused

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Charges under ss. 334(a) C.C.

1 THE COURT: Sylvester Matthews has entered  
2 a guilty plea on two counts on an Indictment of  
3 theft over \$5,000, contrary to section 334(a) of  
4 the Criminal Code. The victims are the Gwichya  
5 Gwich'in Band and the Charter Community of  
6 Tsiigehtchic.

7 The facts are as detailed in the agreed  
8 statement of facts, Exhibit S1, which were filed  
9 yesterday. I will just briefly summarize them.

10 Mr. Matthews was employed as a finance  
11 manager for both the Charter Community of  
12 Tsiigehtchic and the Gwichya Gwich'in Band. He  
13 was employed for both organizations between July  
14 15th, 2007, and February 5th, 2010, when he was  
15 terminated for cause.

16 As part of his employment, Mr. Matthews was  
17 provided with credit cards for both the community  
18 and band. The credit cards were intended to be  
19 used to make reservations for hotels and to pay  
20 for goods and services ordered by the community  
21 or band.

22 As a result of irregularities being noticed  
23 starting in December 2009, accountants were hired  
24 to assess the expenses which had been charged to  
25 the credit cards. The assessment revealed that  
26 Mr. Matthews had used the credit cards many times  
27 for personal expenses mainly while on vacation.

1           There were cash advances as well as charges at  
2           hotels, dental offices, restaurants, bars, liquor  
3           stores, clothing, music and grocery stores.  
4           These charges came from locations in the  
5           Northwest Territories, Alberta, and Ontario. The  
6           total which was charged to the Charter Community  
7           of Tsiigehtchic credit card was \$10,930.71; the  
8           total which had been charged to the Gwichya  
9           Gwich'in Band credit card was \$29,752.02. The  
10          total loss to both the community and the band is  
11          \$40,682.73.

12                   In January 2010, Ms. Lennie, who was the  
13          senior administrative officer for the community,  
14          confronted Mr. Matthews and he admitted incurring  
15          the expenses and wrote two cheques to cover some  
16          of the expenses. Neither cheque cleared as Mr.  
17          Matthew's account did not have sufficient funds  
18          to cover either cheque, and this had occurred  
19          because Mr. Matthews had been terminated from his  
20          employment and apparently no longer had an income  
21          which could cover the cheques.

22                   In terms of Mr. Matthews' personal  
23          circumstances. He is 66 years old. He is  
24          originally from Guyana but has lived in Canada  
25          since 1969. He has lived in communities  
26          throughout the north, both in the Northwest  
27          Territories and Nunavut, since 1990. He has

1 worked in several communities often in a  
2 financial position. He is an accountant by  
3 training but has not completed the final steps to  
4 become a certified general accountant.

5 He is now single but was married; his wife  
6 passed away in 2010. The death of his wife  
7 occurred around the time that these offences were  
8 occurring, but counsel for Mr. Matthews says that  
9 that is not the reason that these offences  
10 occurred.

11 Mr. Matthews currently lives in Tulita and  
12 works casually for several companies there. He  
13 is apparently well-regarded by his employers and  
14 in the community as evidenced by the three  
15 letters of support which were written for him and  
16 filed on these proceedings.

17 Mr. Matthews' explanation for why these  
18 offences occurred, offered through his counsel,  
19 really does not provide an explanation other than  
20 Mr. Matthews saw an opportunity and took it.  
21 While Mr. Matthews has had some difficulties with  
22 alcohol, counsel advises that they are not  
23 offered as an excuse for his actions.

24 It seems, based on what his counsel advised  
25 me, that Mr. Matthews used the credit card  
26 initially for some personal travel on the  
27 mistaken belief that this was permissible and

1           then he later realized that it was not. However,  
2           this conflicts with appendices A and B of the  
3           agreed statement of facts where the initial  
4           personal expenses charged to the credit card  
5           seems to be for dental expenses, which is then  
6           followed by restaurant, liquor, and food charges.

7           The appendices also demonstrate a steady  
8           stream of spending for personal items. It seems  
9           likely that Mr. Matthews made an initial charge  
10          or charges to the credit card and then when this  
11          conduct did not raise any questions or red flag,  
12          he continued and began using the credit cards  
13          more and more frequently. As counsel for Mr.  
14          Matthews acknowledged, it really was an offence  
15          of opportunity.

16          There appears to have been little to no  
17          effort to conceal these transactions or to  
18          deceive anyone about the charges he was making.  
19          That is to Mr. Matthews' credit. However, given  
20          his position as the finance manager for both the  
21          community and the band, it may be that he simply  
22          thought that these transactions would go  
23          unnoticed.

24          On sentence, the Crown is seeking a sentence  
25          of 15 to 18 months' imprisonment and orders of  
26          restitution in favour of the community and the  
27          band. The Crown is opposed to a conditional

1 sentence order on the basis that in the  
2 circumstances, that the sentencing principles of  
3 general deterrence and denunciation cannot be met  
4 by a conditional sentence.

5 Counsel for Mr. Matthews is seeking a  
6 conditional sentence on the basis that all of the  
7 factors that are required for a conditional  
8 sentence are present and that this case is  
9 similar to many of the other cases that have come  
10 before this court and have resulted in  
11 conditional sentences being imposed.

12 I have read all the cases provided by both  
13 Crown and defence and I do not intend to review  
14 them in this decision but I thank counsel for  
15 providing them. They were helpful to review the  
16 principles that courts have considered in similar  
17 cases and for showing examples of when a  
18 conditional sentence has been imposed and when  
19 imprisonment has been imposed. All cases of  
20 course must be dealt with on their own facts in  
21 dealing with the individual offender.

22 There are mitigating factors. Mr. Matthews  
23 has entered a guilty plea. He waived his  
24 preliminary inquiry and has taken efforts to  
25 plead guilty in this court. It has taken some  
26 time for this matter to come to today's point and  
27 from a review of the record on file, it is not

1 clear why. In any event, a trial in this court  
2 was not set, a trial date was not set, and so  
3 this is not a situation where witnesses have been  
4 inconvenienced or have had to testify. While  
5 this was not an early guilty plea or one that was  
6 entered at the earliest opportunity, Mr. Matthews  
7 does deserve credit for his guilty plea.

8 Mr. Matthews has not paid back any of the  
9 money. He had attempted to pay back some of the  
10 money in January 2010 but the cheques that he  
11 provided did not have sufficient funds to clear  
12 the bank. Counsel for Mr. Matthews advises that  
13 she has a cheque for \$5,000 which has been  
14 advanced by Mr. Matthews's employer M.Y.B.  
15 Construction to go towards restitution.  
16 Apparently this cheque is an advance for Mr.  
17 Matthews for future income that he is expected to  
18 earn with his employment with the company. While  
19 this is a testament to how highly regarded Mr.  
20 Matthews is by Bob McPherson, the president of  
21 M.Y.B. Construction, this is not money that Mr.  
22 Matthews has personally provided for restitution.  
23 So while he has pledged his willingness to pay  
24 back the money, his efforts to date have really  
25 had little impact.

26 I acknowledge that Mr. Matthews did lose his  
27 job as a result of these offences and he has been

1 surviving on his CPP pension and a variety of  
2 part-time and casual jobs which counsel advises  
3 me do not quite equal the income that he was  
4 receiving with both the band and the community,  
5 so I acknowledge that his ability to repay  
6 restitution may have been limited in the  
7 circumstances.

8 Mr. Matthews does have a prior criminal  
9 record. He has ten convictions for forgery from  
10 2002 as well as a fail to attend court. For the  
11 forgery convictions, he received nine months  
12 concurrent on each count and was ordered to pay  
13 restitution of \$25,546.71. He also has a  
14 conviction for theft under \$5,000 from 2005 where  
15 he received \$100 fine. There are two other  
16 unrelated convictions on his criminal record.

17 Mr. Matthews' record is particularly of  
18 concern in that he has 11 prior property  
19 offences. The theft under conviction on its own  
20 is of little concern. The convictions for ten  
21 counts of forgery are of greater concern.  
22 Counsel for Mr. Matthews argues that they are  
23 dated and that they would have been related in  
24 that they resulted in one nine-month sentence  
25 which was concurrent on each count. They are  
26 somewhat dated and they are likely related  
27 because of the sentence that was imposed, but



1           they also demonstrate that the forgery that Mr.  
2           Matthews participated in, much like the case  
3           before me today, was not a one-time incident.  
4           There were ten counts of forgery. The amount of  
5           restitution that he was required to pay at that  
6           time, over \$25,000, also tells me that, like  
7           today, the amounts that were involved were not  
8           insignificant.

9           In this case the amount is over \$40,000 and  
10          this offence occurred over a period of time.  
11          While there are two counts before the court that  
12          Mr. Matthews has pled guilty to, in looking at  
13          the agreed statement of facts it is apparent that  
14          the credit cards were used by Mr. Matthews  
15          multiple times over a lengthy period.

16          Offences where an individual steals from  
17          their employer are referred to as breach of trust  
18          offences because they involve an employee who has  
19          been trusted by their employer to treat the money  
20          and/or goods that they are responsible for in an  
21          appropriate manner and not to take them or use  
22          them for their own benefit. In small communities  
23          like Tsiigehtchic, communities and bands rely on  
24          persons like Mr. Matthews to look after their  
25          finances, and the position that Mr. Matthews was  
26          in, finance manager, tells me that he was the  
27          person who should have been on the lookout for

1 theft and fraud. The band and community were  
2 relying on him to ensure that this did not  
3 happen, and instead he is the person who abuses  
4 their trust and charges thousands of dollars in  
5 personal expenses on their credit cards.

6 There has been a victim impact statement  
7 which has been filed by Ms. Lennie, who is the  
8 former senior administrative officer, and I do  
9 want to quote from that because I think what she  
10 says demonstrates the impact that it has had upon  
11 the community and the band. She says:

12 As a small community of 200 people,  
13 we sometimes rely on the expertise  
14 of people outside our community to  
15 fill senior management positions.  
16 We trust all our employees to  
17 represent our organization and  
18 community with the utmost respect  
19 and honesty.

20 It is apparent from the victim impact  
21 statement that the community relied upon, and  
22 trusted, Mr. Matthews. As the victim impact  
23 statement also details, these thefts have had an  
24 impact on both organizations as they are located  
25 in a small community and have a limited budget.  
26 Resources that are scarce are intended for the  
27 use of the community and they need to budget to  
ensure that the needs of the community are met,  
and the impact of Mr. Matthews' actions must have

1 affected their ability to do so. Violations of  
2 that trust, the trust that is placed in  
3 individuals like Mr. Matthews, are taken  
4 seriously by the courts.

5 In sentencing individuals guilty of thefts  
6 in these circumstances as the cases demonstrate,  
7 deterrence is one of the primary considerations.  
8 Rehabilitation is as well a focus that cannot be  
9 lost sight of. Many of the individuals who come  
10 before the court are first time offenders and are  
11 otherwise of good character and the actions that  
12 they have undertaken have been characterized  
13 often as really out of character.

14 Deterrence means that other individuals,  
15 when hearing of this, would be deterred from  
16 committing this type of offence and that Mr.  
17 Matthews himself is specifically deterred.

18 A focus as well has to be denunciation, to  
19 express society's condemnation of this type of  
20 conduct.

21 In looking at the requirements of section  
22 742.1, which are the requirements for the  
23 imposition of a conditional sentence, the  
24 section, as it was prior to November 2012, had  
25 four elements which the court must be satisfied  
26 before imposing a conditional sentence:

27 The first is the person is convicted of an

1 offence prosecuted by way of indictment for which  
2 there is a maximum term of imprisonment that is  
3 ten years or more not punishable by a minimum  
4 sentence.

5 Secondly, that the court will impose a  
6 sentence of less than two years.

7 In the circumstances, I am satisfied that  
8 these two conditions have been met. This is not  
9 a situation where the court would seek or the  
10 Crown is asking for a sentence of more than two  
11 years.

12 A third prerequisite is that service of the  
13 sentence in the community would not endanger the  
14 safety of the community.

15 And the fourth is that it has to be  
16 consistent with the fundamental purposes and  
17 principles of sentencing set out in the Criminal  
18 Code.

19 In considering these last two factors, and  
20 particularly the fourth factor, there are several  
21 areas of concern and one is Mr. Matthews' prior  
22 criminal record. He has committed several  
23 offences of forging documents which resulted in  
24 the loss to the victim of \$25,000, and that is of  
25 concern. The offences before the court today  
26 began in June 2008, so he has participated in the  
27 same type of criminal activity a little over six

1 years later. That is also of concern. The  
2 forgery convictions were also Mr. Matthews' first  
3 convictions and he received nine months'  
4 incarceration. Presumably a conditional sentence  
5 was available to him then and he did not receive  
6 it.

7 In any event, in the end what I think  
8 significant about that prior conviction is that  
9 the previous sentence of imprisonment has not  
10 served to deter Mr. Matthews. From 2008 to 2010,  
11 he took over \$40,000 from his employers. He did  
12 not get the message the court was sending him in  
13 2002 and that is of great concern.

14 A conditional sentence has to be consistent  
15 with the fundamental purpose and principles of  
16 sentencing. Breach of trust thefts, as the cases  
17 show, require the sentencing principles of  
18 deterrence and denunciation to be paramount, and  
19 conditional sentences can still be imposed, can  
20 still meet the sentencing objectives which have  
21 been established in many cases where deterrence  
22 is one of the primary objectives.

23 Given Mr. Matthews' position as a finance  
24 manager, he would have been in a position to deal  
25 with funds. While he took no steps to conceal  
26 his activities, because of his position, the bank  
27 and the community were vulnerable to his actions.

1 As I stated earlier, they trusted him to  
2 safe-keep the finances, not abuse them.

3 These offences also occurred persistently  
4 and repeatedly over a fairly lengthy period of  
5 time. This was not a one time occurrence, and  
6 tens of thousands of dollars were taken. I am  
7 not certain that the band or community will ever  
8 fully recover the funds taken by Mr. Matthews,  
9 and it appears that Mr. Matthews only stopped  
10 because he was caught and terminated from his  
11 position. Overall, I am not satisfied that the  
12 circumstances of this case are such that  
13 deterrence can be met with a conditional sentence  
14 order.

15 As stated in the case of R. v. Harding, 2006  
16 SKCA 118, the Saskatchewan Court of Appeal stated  
17 at paragraph 25:

18  
19 There may be circumstances, as noted  
20 in R. v. Proulx, where the need for  
21 deterrence and denunciation is so  
22 pressing that a period of  
23 incarceration is necessary to the  
24 ends of deterring similar conduct in  
25 the future and of expressing  
26 society's condemnation of the  
27 offender's conduct.

24 I agree with that comment and view the  
25 circumstances in this case as calling out for  
26 denunciation and deterrence. I cannot see that a  
27 conditional sentence would meet those objectives

1 in this case. In the circumstances, I am  
2 satisfied that the sentencing principles require  
3 that a sentence of imprisonment be imposed.

4 Mr. Matthews, can you stand up, please.

5 For the charge of theft over, Count 1 on the  
6 Indictment, theft from the Gwichya Gwich'in Band,  
7 I impose a sentence of 12 months' imprisonment.

8 For the charge of theft over from the  
9 Charter Community of Tsiigehtchic, Count 2 on the  
10 Indictment, I impose a sentence of imprisonment  
11 for 12 months which will be served concurrently.

12 There will be a restitution order for the  
13 benefit of the Charter Community of Tsiigehtchic  
14 in the amount of \$10,930.71 and a separate  
15 restitution order to the benefit of the Gwichya  
16 Gwich'in Band for the amount of \$29,752.02.

17 The victims of crime surcharge will be  
18 waived as a result of hardship.

19 You may sit down, Mr. Matthews.

20 Counsel, is there anything else that we need  
21 to address on this file?

22 MR. ONYSKEVITCH: Nothing from the Crown, Your  
23 Honour. Thank you.

24 THE COURT: Mr. Falvo.

25 MR. FALVO: No, Your Honour. Thank you.

26 THE COURT: Then we will close court.

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Certified to be a true and  
accurate transcript pursuant  
to Rule 723 and 724 of the  
Supreme Court Rules of Court.

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Annette Wright, RPR, CSR(A)  
Court Reporter