

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

BETTY LOU COMBER

Transcript of the Reasons for Sentence by The Honourable
Justice S. H. Smallwood, at Yellowknife in the Northwest
Territories, on May 29th A.D., 2013.

APPEARANCES:

Ms. W. Miller: Counsel for the Crown
Ms. C. Wawzonek: Counsel for the Accused

Charge under s. 334(a) Criminal Code of Canada

1 THE COURT: Betty Lou Comber has entered
2 a guilty plea to a charge of theft over \$5000
3 contrary to Section 334(a) of the Criminal
4 Code. The facts are as detailed in the agreed
5 statement of facts which were filed this
6 morning, and I will just briefly summarize
7 them.

8 Ms. Comber worked at Walmart here in
9 Yellowknife for approximately six years. She
10 worked in the cash office and had access to
11 large amounts of cash. Starting in 2008, she
12 printed off receipts and had refunds issued to
13 her. She was also seen on video surveillance
14 concealing money while counting it. Video
15 surveillance from February to June 2012 showed
16 the accused taking almost \$8000 in cash from
17 the store. On June 16th, 2012, Ms. Comber was
18 observed by the loss prevention manager
19 concealing cash in her sweater. When she left
20 the store with the money in her sweater, she
21 was stopped by a store employee and arrested.
22 \$320 in cash was found on her. She spoke to
23 the loss prevention manager and admitted that
24 she had taken money for approximately three
25 years by making the cash till short and
26 running receipts as refunds to make up the
27 extra money. She also admitted not entering

1 all of the deposit money and keeping the extra
2 money. She did not know how much she took but
3 she guessed that she might have taken \$30,000.
4 They were unable to ascertain the exact amount
5 of money taken by Ms. Comber but it was at
6 least \$5000. A solicitor for Walmart demanded
7 the repayment of \$30,310.75 on behalf of
8 Walmart and Ms. Comber repaid that amount and
9 refinanced her home to do so.

10 Ms. Comber is 45 years old. She is
11 married, has two children and a grandchild, as
12 well her niece also lives with her.

13 She has a prior criminal record for theft
14 over from 1989. At that time she received a
15 sentence of four months incarceration followed
16 by three years probation and was required to
17 pay restitution of \$7000.

18 She has been employed for the past 13
19 years and worked a second job for Walmart for
20 the past six years until these charges arose.
21 She has maintained her employment with her
22 current employer although after she advised
23 them about this charge, they conducted an
24 investigation to determine whether there were
25 any concerns about similar activity occurring
26 with her employment there. The investigation
27 determined that there were none but she was

1 put into another position where she was no
2 longer responsible for payroll.

3 Ms. Comber's explanation offered through
4 counsel relate circumstances of financial
5 hardship and a personal history which
6 precipitated these events. I accept the
7 explanations offered by her counsel and by Ms.
8 Comber herself though at the same time they
9 are somewhat baffling. Ms. Comber was employed
10 with two jobs. She was able to refinance her
11 home to pay back the money. And there appears
12 to be somewhat of a rush, an "adrenalin rush"
13 as described in the pre-sentence report, in
14 doing these activities. So this is not a
15 situation where there is any evidence that Ms.
16 Comber was facing crushing debt, a severe drug
17 or gambling problem which has been present in
18 other cases before this Court.

19 It is unfortunate that Ms. Comber chose to
20 risk her job, her freedom, and her reputation
21 for money. But the personal circumstances
22 that Ms. Comber's counsel related demonstrate
23 a woman who did have issues, ones which
24 impacted upon her in many areas, and it is to
25 her credit that she has taken actions to
26 address those issues and to deal with her
27 family situation. It is important to note

1 that she has the continued support of her
2 family.

3 Counsel have presented a joint submission
4 to the Court on sentence, requesting a 12
5 month conditional sentence order be imposed.
6 Crown counsel, in addition, suggests that 12
7 months of probation should follow the
8 conditional sentence order. During
9 submissions this morning, I expressed some
10 concern, not with the conditional sentence
11 aspect but with the length of the conditional
12 sentence. My concern was whether or not 12
13 months was appropriate given a few factors
14 that concerned me: The lengthy period of time
15 over which Ms. Comber committed this offence,
16 her prior related record which albeit is
17 dated, the amount of money which Ms. Comber
18 took from her employer.

19 Counsel made further submissions regarding
20 the appropriate length of sentence and, after
21 consideration, I have decided to go along with
22 the 12 month conditional sentence joint
23 submission. And, really, there are two
24 factors that cause me to do so: Ms. Comber's
25 early acceptance of responsibility which was
26 demonstrated by her guilty plea and her paying
27 back the money in August 2012. And secondly,

1 that she has paid the full amount of money
2 requested by Walmart without question, even
3 though the Crown fairly conceded that the
4 exact amount of money was not ascertainable
5 and that the Crown could not have likely
6 proven the full \$30,000 if the matter went to
7 trial.

8 I have read all of the cases presented by
9 both Crown and defence and I don't intend to
10 review them in this decision but I thank
11 counsel for providing them. They were helpful
12 in providing a range of sentences that have
13 been imposed for similar offences in the past.
14 And all cases, of course, must be dealt with
15 on their own facts and dealing with the
16 individual offender.

17 There are significant mitigating factors.
18 Ms. Comber has entered a guilty plea and
19 signaled her intention to do so at an early
20 opportunity. A guilty plea has been
21 considered as an expression of remorse and an
22 acceptance of responsibility and when Ms.
23 Comber addressed the court earlier, it was
24 clear that she is remorseful, that she accepts
25 responsibility. While talking about the
26 issues that she was facing, she didn't use
27 them to excuse her actions but accepted that

1 she was responsible for her actions and that
2 she hopes to become a better person.

3 She has also paid back the \$30,000 which,
4 as previously noted, is something that the
5 Crown likely would not have been able to prove
6 that full amount and she did so at a very
7 early point in this proceeding.

8 Ms. Comber, as I mentioned, has a criminal
9 record. It is related but it is also dated so
10 it is really of little significance in the
11 final analysis.

12 There are aggravating factors as well.
13 The amount of \$30,000 is a significant amount.
14 Again this is somewhat with a caveat that this
15 amount is not ascertainable but it is also
16 significant that Ms. Comber paid that money
17 without question to Walmart so there is some
18 acceptance by her that that is an accurate
19 amount of money.

20 As well, it is aggravating that this
21 offence occurred over a significant period of
22 time. This wasn't a one-time or two-time
23 event that happened but it happened on
24 numerous times over several years.

25 It is, as well, aggravating that this is a
26 breach of trust situation. Offences where an
27 individual steals from their employer have

1 been referred to as breach of trust offences
2 because they involve an employee who has been
3 trusted by their employer to treat the money
4 and/or goods that they are responsible for in
5 an appropriate manner and not take them for
6 their own benefit.

7 Now, this is not a situation like the case
8 that was provided of Sanguéz where the theft
9 by the employee resulted in the closure of the
10 business. It may be that Walmart is a big
11 corporation who can likely absorb this loss,
12 that does not make it any less of a breach of
13 trust. Businesses, whether big or small, rely
14 on their employees for their businesses to
15 operate and entrust them to do so. So
16 violations of that trust are taken seriously.

17 Prior to the conditional sentence regime,
18 thefts like this would result in jail often.
19 The amendments to the Criminal Code that
20 occurred in November 2012 may yet result in
21 imprisonment being imposed for these types of
22 offences.

23 So in sentencing individuals guilty of
24 thefts in these circumstances, as the cases
25 demonstrate, deterrence is one of the primary
26 considerations. Rehabilitation is as well a
27 focus, particularly for an offender in Ms.

1 Comber's position. Deterrence means that
2 other individuals, when hearing of this, would
3 be deterred from committing this type of
4 offence and that Ms. Comber herself is
5 specifically deterred from committing this
6 type of offence again. And this is why
7 conditional sentences have been imposed in
8 these situations. The offenders are often
9 individuals like Ms. Comber who are otherwise
10 of good character and the offence, committed
11 for whatever reason, is out of character.

12 The punitive aspects of a conditional
13 sentence also meet the deterrence principles.
14 The sentences are not intended to be easy.
15 There are expected to be restrictions on
16 liberty, movement, which make a conditional
17 sentence a unique punishment which can be
18 appropriate for this type of offence and
19 offender.

20 In looking at the requirements of
21 Section 742.1, as it was prior to November
22 2012, there are four elements which the court
23 must be satisfied before imposing a
24 conditional sentence. The first is that the
25 person is convicted of an offence prosecuted
26 by way of indictment for which the maximum
27 term of imprisonment is ten years or more and

1 it is not punishable by a minimum term of
2 imprisonment. Also, the court has to be
3 imposing a sentence of less than two years
4 imprisonment. Thirdly, that the service of
5 the sentence in the community would not
6 endanger the safety of the community. And
7 fourth, that it would be consistent with the
8 fundamental purpose and principles of
9 sentencing that are set out in the Criminal
10 Code. I am satisfied that all of these
11 conditions have been met.

12 This is not a situation where the court
13 would impose a sentence of more than two
14 years. The accused's personal circumstances
15 and the circumstances of the offence satisfy
16 me that the safety of the community would not
17 be endangered by serving a sentence in the
18 community. A conditional sentence in this
19 circumstance is consistent with the
20 fundamental purpose and principles of
21 sentencing as you can still meet the
22 sentencing objectives with a conditional
23 sentence.

24 I am required, pursuant to Section 742.2,
25 to consider whether an order under Section 109
26 or 110 is applicable. The Crown has not
27 sought this order and based upon the

1 circumstances of the offence, I am satisfied
2 that one is not required.

3 Can you stand up please, Ms. Comber.

4 Ms. Comber, I'm sentencing you to 12
5 months imprisonment to be served in the
6 community. The order will have a number of
7 conditions. There are a number of conditions
8 which are required under the Criminal Code,
9 and they are to keep the peace and be of good
10 behavior; to appear before the court when
11 required to do so by the court; to report to
12 your conditional sentence supervisor within
13 two working days of today and thereafter when
14 required by the supervisor; you are to remain
15 within the Northwest Territories unless
16 written permission to go outside the Northwest
17 Territories is obtained from the court or your
18 supervisor. You are to notify the court or
19 your supervisor in advance if you are going to
20 change your name or your address and you have
21 to promptly notify the court or your
22 supervisor if you change your employment or
23 your occupation.

24 In addition, I am imposing the following
25 additional conditions: You are to complete
26 150 hours of community service work at the
27 direction of your supervisor at a rate of at

1 least 12 hours per month. You are not to be
2 employed in a position where you are
3 responsible for dealing with money on a
4 regular basis, and that's as much for your own
5 protection as the public's. For the first
6 nine months of the order you are to be indoors
7 at your residence 24 hours a day with the
8 following exceptions: To go directly to,
9 attend at, and directly home from work; to
10 complete your community service as directed by
11 your supervisor; to obtain emergency medical
12 attention for yourself or a member of your
13 immediate family; to attend counselling as
14 directed by your supervisor; to attend court
15 or meetings with your supervisor; and for one
16 period a week, of not more than three hours,
17 to obtain groceries and to attend to other
18 personal items. You will as well also
19 cooperate fully with random checks by
20 telephone and in person by your supervisor or
21 the police to verify compliance with this
22 order. What that means is that you will
23 present yourself at the door of your residence
24 when requested by the supervisor or the
25 police, if they come to your house, and you
26 will speak to them on the telephone, either
27 the supervisor or the police, if they call

1 your house wanting to check that you are
2 there. You will also advise your supervisor
3 of your hours of work. Now, if you work
4 regular hours, that's fine, but if you work on
5 a shift schedule or a schedule where it
6 changes regularly, you will advise your
7 supervisor of your work schedule in advance.

8 In addition, a copy of the order, when it
9 is completed by the clerk, will be given to
10 you and explained to you and you will have to
11 sign that.

12 If you have difficulties with the
13 conditions, you or your supervisor can apply
14 to the Court to change the condition. That is
15 something that you should discuss with your
16 supervisor if there are problems that arise
17 and then you can decide whether that is
18 something that you want to pursue. As well, I
19 have to advise you that if you breach the
20 order, you can be arrested and a breach
21 hearing held. Because this is a conditional
22 sentence of imprisonment, if you breach and
23 are found to have committed the breach, the
24 court can, and often does, order that an
25 offender remain in jail and serve some or all
26 of the sentence.

27 Do you understand the conditions, Ms.

1 Comber?

2 THE ACCUSED: Yes, I do.

3 THE COURT: There will also be a 12
4 month probation order which will follow the
5 conditional sentence order. There will be the
6 statutory conditions, which again are
7 conditions required by the Criminal Code, and
8 they are to keep the peace and be of good
9 behavior, to appear before the court when
10 required to do so by the court, to notify the
11 court or the probation officer in advance of
12 any change of name or address, and promptly
13 notify the court or the probation officer of
14 any change in employment or occupation.

15 I am going to add two optional conditions:
16 That you are to report to your probation
17 officer within seven days of the expiry of
18 your conditional sentence order and thereafter
19 as directed. Sometimes your probation officer
20 is the same person as the conditional sentence
21 supervisor but before your conditional
22 sentence expires you need to confirm that or
23 check on that with your probation officer or
24 your conditional sentence supervisor. As
25 well, the second condition will to be take
26 counselling as directed.

27 You can sit down, Ms. Comber.

1 THE ACCUSED: Thank you.

2 THE COURT: Now, the one thing which was
3 not addressed in submissions was the victim
4 surcharge. I don't know if counsel want to
5 make submissions on that.

6 MS. WAWZONEK: Your Honour, I am not in a
7 position to make any application for hardship
8 in the circumstances.

9 THE COURT: There will be a \$100 victim
10 of crime surcharge which will as well be
11 payable.

12 MS. WAWZONEK: If I could ask for one month
13 time to pay, please.

14 THE COURT: Does Crown have any comment
15 on that?

16 MS. MILLER: No, thank you, Your Honour.

17 THE COURT: Okay, so one month to pay.
18 And Mr. Clerk, do you want Ms. Comber to
19 attend at a certain time at the clerk's office
20 so you have time to complete the paperwork.

21 THE CLERK: Yes, Your Honour, it would
22 be half an hour to an hour.

23 THE COURT: Okay. How about then at
24 four, is that... I know the office closes at
25 four.

26 THE CLERK: Yes, ma'am, 4 o'clock.

27 MS. WAWZONEK: Your Honour, I'm sorry for

1 interrupting. Su-Ellen Kolback had approached
2 myself and the Crown at the end of our
3 submissions and after the court closed asking,
4 or suggesting a specific condition. I will
5 relate to the Court what she told us and what
6 my friend and I might suggest if that might
7 assist the court.

8 Ms. Kohlback said, she suggested a
9 condition that would allow an additional
10 exception to CSO -- sorry, to the house arrest
11 being "or with the written permission of her
12 supervisor". That seemed a bit open ended and
13 she gave us the reason for it is that
14 apparently Ms. Comber's mother, I think, has
15 cancer and so I guess Ms. Kohlback was aware
16 that she has to attend to medical appointments
17 with her mother. So I'm not sure if that
18 would be covered under emergency medical for
19 the immediate family. Or if there is a way to
20 simply either state within that exception
21 including "your mother's medical needs". I
22 mean, I am certainly open to it, again I'm
23 conveying to the Court what Ms. Kohlback
24 conveyed to us.

25 THE COURT: Well, how about then to
26 attend medical appointments with your mother
27 with the written permission of your

1 supervisor. So that allows Ms. Kohlback to
2 monitor that somewhat so that there is not
3 every day going to an appointment sort of
4 thing.

5 MS. WAWZONEK: I think that answers what
6 Ms. Kohlback was raising with us, Your Honour.

7 THE COURT: Is there anything else,
8 counsel?

9 MS. MILLER: Your Honour, I was not sure,
10 was counselling part of the conditional
11 sentence order? To take counselling?

12 THE COURT: If I didn't state it, it was
13 intended to be. So it was under the
14 exceptions but it should perhaps be -- under
15 the exceptions to the 24 hours a day being in
16 the residence but there should be a separate
17 one to take counselling as directed by the
18 supervisor so that it is clear.

19 MS. MILLER: Thank you, Your Honour.

20 THE COURT: Is there anything else,
21 counsel?

22 MS. WAWZONEK: No, Your Honour.

23 MS. MILLER: No, Your Honour.

24 THE COURT: So Ms. Comber, you can
25 attend at the clerk's office on the third
26 floor at 4 o'clock to sign your paperwork. We
27 will adjourn.

1 THE ACCUSED: Thank you.

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5 Certified to be a true and
6 accurate transcript pursuant
7 to Rules 723 and 724 of the
8 Supreme Court Rules,

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Lois Hewitt,
Court Reporter

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