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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

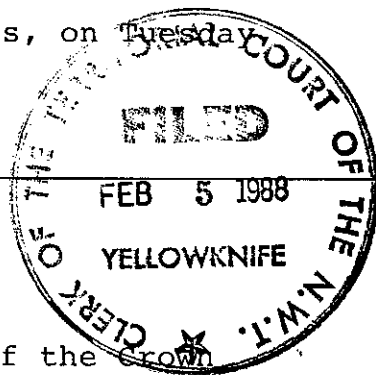
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

JOHN ISAAC KALINEK

Transcript of the Oral Reasons for Sentence delivered
by His Honour Judge R. M. Bourassa, sitting at Yellow-
knife, in the Northwest Territories, on Tuesday
August 25, A.D. 1987.



APPEARANCES:

MS. N. BOILLAT On behalf of the crown
MR. R. C. REHN On behalf of the Defence

(Charges under Sections 306(1)(b), 237(b), 295, and
312(1)(a) of the Criminal Code of Canada)



1 THE COURT: I will deal with the break and enter firstly. I
2 have no hesitation in stating that were we in Nova Scotia,
3 Ontario, or Edmonton, I think Mr. Kalinek would be going to
4 the penitentiary, and if not the penitentiary, he would at
5 least be sentenced to two years less a day, given the facts
6 before me. For some reason, one reason or another which I
7 am unable to find in any reported decision, the penalty for
8 break, enter and theft in the Northwest Territories seems
9 to be on a lower plane or lower scale than in southern
10 Canada. There are arguments, I suppose, both ways why that
11 is: some say it is because most of the break and enters are
12 "pop and chips"--that is to say, insignificant thefts such
13 as in this case, four cigarettes, a can of tobacco, and a
14 bottle of gin and whisky--others say it is because the sense
15 of property isn't fully developed. Whatever it is, I think
16 it is fair to observe that the penalties for break, enter
17 and theft are lower in the Northwest Territories.

18 This break, enter and theft, notwithstanding the
19 fact that it was just two bottles of liquor and some cigar-
20 ettes that were stolen, in my view is a despicable, terrible
21 break and enter. The accused must have obviously known that
22 the two occupants were blind. He smashed his way in, simply
23 helped himself to what he wanted in the presence of the two
24 blind, elderly men. When one of them squeaked in protest
25 and said he was going to phone the police, this accused rips
26 the phone away or rips the phone out of the wall. I can
27 appreciate that those two elderly, blind men must have been

1 very frightened. It is not before me whether they knew who
2 they were dealing with or not. If they knew who they were
3 dealing with, I can appreciate their terror, given that this
4 accused has been convicted of assault causing bodily harm,
5 assault, possession of a weapon dangerous to the public
6 peace, assault, assault, aggravated assault with intent to
7 resist arrest, dangerous use of a firearm, assault again,
8 and assault again in 1981. Of course, I don't know, it's
9 not before me that they knew. Regardless of whether they
10 knew who was there or not, the circumstances that have been
11 described to me by the Crown are enough in my view to
12 generate fear or terror, especially in the hearts of two
13 elderly, blind men.

14 The break and enter is cynical to the extreme.
15 The accused exploited their disability, exploited their weak-
16 nesses in the pursuit of his desire to be intoxicated. I
17 notice that the problem with respect to alcohol is reflected
18 in the accused's criminal record, particularly in 1985: for
19 example, he was given 16 months imprisonment, and it must
20 have been shortly after his release in Inuvik and he is con-
21 victed again of driving with over 80 milligrams of alcohol
22 in his blood. No message seems to get through to this indi-
23 vidual. This Court is going to state to Mr. Kalinek that
24 this kind of conduct is unacceptable.

25 With respect to the drinking and driving, there
26 can be no argument with the Crown's position. There is a
27 minimal term of imprisonment required given the previous

1 convictions and notice of intention.

2 The possession of stolen property doesn't amount
3 to much; although, one can't condone it or be seen to con-
4 done it.

5 Stand up, please, Mr. Kalinek. On the charge of
6 break, enter and theft, there will be a term of imprisonment
7 of 14 months. On the charge of over 80 milligrams of alco-
8 hol in your blood, there will be a term of imprisonment of
9 three months consecutive. On the charge of possession of
10 stolen property, three months concurrent. I confirm that
11 I've taken into account that you have pleaded guilty, as
12 well as the submissions made by your Defence counsel, and I
13 am taking totality into account.

14 MS. BOILLAT: The driving prohibition, your Honour?

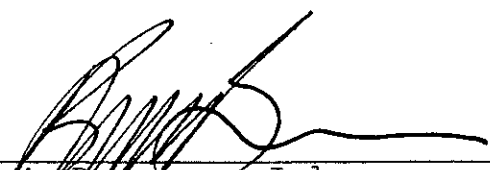
15 THE COURT: Prohibition from driving for three years from this
16 date.

17 MR. REHN: Your Honour, I am advised by my client he does not
18 have a driver's licence.

19 THE COURT: Well, you'll explain to him he is even further in
20 jeopardy now should he be apprehended on his release for
21 drinking and driving, or even simply driving.

22 MR. REHN: Certainly, sir.

23 (AT WHICH TIME THIS MATTER WAS CONCLUDED.)
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R. M. Bourassa, Judge
Territorial Court of the
Northwest Territories