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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

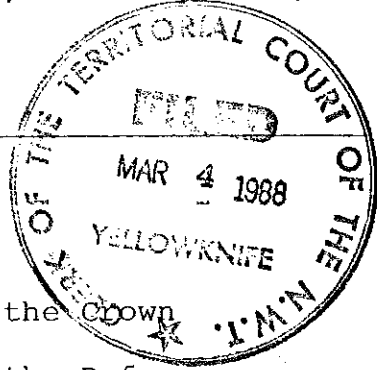
CLAYTON CAPOT-BLANC

Transcript of the oral sentencing delivered by His Honour Judge T.B. Davis, sitting at Tuktoyaktuk, in the Northwest Territories, Wednesday, February 10th, A.D. 1988.

APPEARANCES:

MS. S. AITKEN Counsel for the Crown
MS. J. LILLEGRAN Counsel for the Defence

(Charge under Section 77(c) of The Liquor Act)



1 THE COURT: On the finding that the accused had offered to
2 sell liquor on the 28th of June, 1987, we today must impose
3 a sentence that is suitable for that offence under The Liquor
4 Act. The Liquor Act itself under Section 100(1) indicates
5 that for an offence of this nature, the first conviction,
6 the fine shall not exceed Five thousand dollars, or the person
7 can be subject to a fine or to a fine and imprisonment for a
8 term not exceeding twelve months, or to both. As has been
9 pointed out, there have been a number of cases where the
10 fines have been the maximum fines. There have been other
11 cases where a number of people in the Northwest Territories
12 within the last three years have been placed in jail for a
13 periods up to three and four months for selling liquor. I
14 don't see much difference in offering to sell liquor than
15 the actual sale of liquor. Therefore, the sentence should
16 be such that it deters people from having liquor for sale
17 and deters them from selling. That is the only way the
18 public can be protected from the adverse effects of liquor,
19 at high prices from bootleggers.

20 In this instance, the accused has never before been
21 convicted of selling liquor, and although he had been a
22 trouble-maker, for sure, for a ten-year period, during the last four
23 years he has been out of trouble. He hasn't had any convic-
24 tions before the Court since 1984. To that extent, after
25 having been regularly before the Courts, he deserves some
26 credit for at least staying out of the criminal Courts in the
27 past four years, or over three. That doesn't mean, of course,

1 that we are not supposed to penalize him today for breaking
2 the law under The Liquor Ordinance, but it is not the worst
3 circumstance, and he is not now the worst offender under the
4 Act. Therefore, it is probably not appropriate that the
5 highest penalty should be imposed. But to ensure the accused
6 and others know that the Courts do deal severely with persons who
7 are still in violation of the Act, I am going to impose a
8 fine in the range that usually is imposed for first offenders.
9 On one occasion in a small community in the Delta, I imposed
10 only Six hundred dollars on the sale of liquor, about three
11 years ago, because the young lady had two children, she was
12 a single mother and had no job. That was at that time noted
13 as an exception and a small fine. Other fines ranging up to
14 Three thousand dollars are more appropriate and are usually
15 imposed.

16 The accused has in recent years also participated
17 in community activities to the extent that he now has
18 taken on the responsibility of being Fire Chief in Tuktoyaktuk,
19 and I think by staying out of the criminal Courts for three
20 years he is proving through his actions that he is at least
21 staying out of, or trying to stay out of, some types of
22 trouble. Therefore, I am going to impose just the ordinary
23 fine at this time. Now, in doing so, I have to warn the
24 accused that if he were to be convicted of this offence, this
25 or a similar offence, at any time in the future, he then
26 would be subject to the minimum of Five thousand dollars and
27 a likelihood of jail, because the Court must impose at least

1 Five thousand dollars if ever he were to be convicted of an
2 offence in the future. In this instance, the fine, then, will
3 be in the amount of Two thousand, five hundred dollars, or
4 in default thereof, two months in jail. How much can the
5 accused pay on that fine over a period of time? How much
6 if he pays something each month?

7 MS. LILLEGRAN: Would nine months be reasonable, Your Honour?

8 THE COURT: He can pay something in the vicinity of a couple
9 of hundred dollars each month?

10 MS. LILLEGRAN: Do you wish that payment per month?

11 THE COURT: It is preferable for the Court if he could make
12 payments on a monthly basis, because at that point when the
13 times goes by, if he has made efforts and hasn't been able
14 to complete the full payment, I can always extend the time.
15 If he doesn't pay on a regular basis what he can afford, at
16 the end of the time then if he hasn't paid, not much
17 likelihood of an extension. Is there a fine options program
18 available in this community?

19 SOCIAL WORKER: There isn't.

20 THE COURT: How much do you think you can pay each month on
21 the fine?

22 MR. CAPOT-BLANC: Three hundred.

23 THE COURT: Well, I will allow you, then, eight months to pay
24 the fine at this time. If you make an effort and you cannot
25 complete it in that time, we will have to have an application
26 for an extension, but eight months will be allowed to pay it.

27 MS. LILLEGRAN: Thank you, Your Honour.

1 MS. AITKEN: Your Honour, if there could be an order in relation
2 to the exhibits.

3 THE COURT: Oh, yes. With regard to the exhibits, the eight
4 bottles of liquor that were taken by a search warrant that
5 were related to a charge of having or keeping liquor for sale,
6 on that particular offence the accused was dismissed on the
7 charge. Therefore, he was not convicted of the charge, and
8 the exhibits are before the Court for distribution according
9 to an order of the Court. The Liquor Act says that when a
10 seizure of liquor is made, the person from whom it is seized
11 can apply to have the liquor returned to the rightful owner.
12 That application is supposed to be made within a period of
13 two months. There is a similar ability of a person to ask
14 for a return of narcotics if they are seized under The Narcot-
15 ics Control Act. It would seem to me, however, that in this
16 instance the liquor was seized under a charge that was
17 dismissed, and although the accused has not made an application
18 for the restoration of the liquor, I am of the opinion that
19 that section of the Act is not one that would be valid in
20 law, and if need be I will file a judgment on that point,
21 because I feel it probably is contrary to the Charter of
22 Rights and Freedoms in that it causes an automatic forfeiture
23 of goods that are seized without criminal conviction. There-
24 fore, on this occasion, I am going to extend the time that is
25 required under the Act and allow the accused to apply for the
26 return of the liquor, of, if preferable to counsel today, I
27 will, in fact, just order that the seized liquor be returned

1 to the rightful owner, and I will hear counsel on either of
2 those directions that I am prepared to make today, noting
3 that it is contrary to the terms of The Liquor Act. Does it
4 matter which, counsel?

5 MS. AITKEN: Your Honour, I don't have any preference as to how
6 Your Honour directs it. However, I would like a judgment from
7 Your Honour as to specifically what provision in the Charter
8 that it breaches and why. In fact, you are basically striking
9 down that section?

10 THE COURT: Yes.

11 MS. LILLEGRAN: Yes, Your Honour. Through The Liquor Act I didn't
12 note a provision in there for extension of time limits under
13 the Act and discretion to do so. I would prefer if Your
14 Honour ordered the liquor returned.

15 THE COURT: At this time, then, I will order the return of the
16 exhibits, the liquor, and the boxes that were seized, to the
17 accused, and I will file reasons for that decision at a later
18 date as soon as is possible for me to do so.

19 MS. AITKEN: Your Honour, and that would be at the expiry of
20 the appeal period?

21 THE COURT: Yes, that certainly can be held until such time as
22 the expiration of the appeal period. The appeal period would
23 commence from today, however, on the matter.

24 MS. AITKEN: I would hope, then, Your Honour would have the
25 reasons in very shortly, as if the Crown chooses to appeal,
26 the appeal would start running from today. If we don't know
27 the reasons for the judgment --

1 THE COURT: It may be, then, that it would be appropriate to
2 file the Notice of Appeal on the decision with grounds to be
3 filed at a later date.

4 MS. AITKEN: If I could have a direction from Your Honour, then,
5 as to what section of the Charter of Rights that it --

6 THE COURT: At the moment I am not sure if I will end up having to
7 find it just contrary to fundamental justice.

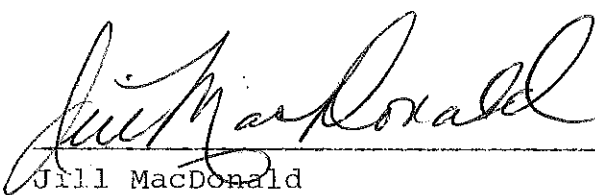
8 MS. AITKEN: Fine, Your Honour.

9 MS. LILLEGRAN: Thank you, Your Honour.

10 THE COURT: Thank you. At the expiry of the appeal period
11 starting today, then, the exhibits will be returned.

12 (AT WHICH TIME THIS MATTER WAS CONCLUDED).
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16 Certified a correct transcript,
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20 Jill MacDonal
21 Court Reporter.
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