

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-and-

MELVIN DOUGLAS SHEEHAN

Transcript of the Oral Sentencing delivered by His Honour
Judge T.B. Davis, in Yellowknife, in the Northwest
Territories, on the 2nd day of February A.D., 1990.

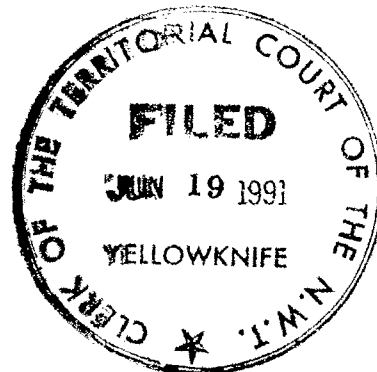
APPEARANCES:

Mr. D. McWhinnie:

For the Crown

Mr. A. Regel:

For the Accused



1 THE COURT: Melvin Douglas Sheehan, who is a
2 37-year-old resident of Yellowknife, comes before the
3 Court on three offences admitting that on October the
4 12 at 3:30 in the morning he was observed driving a
5 motor vehicle. After failing the ALERT test was
6 arrested and is today convicted of impaired driving.
7 At that time the accused acknowledges that he had been
8 prohibited from driving when he appeared in the Court
9 in Edmonton in January of 1989 and was under a
10 prohibition order which he violated by operating a
11 motor vehicle and therefore he violated Section 259(4)
12 of the Criminal Code.

13 On January the 23, 1990 the accused was in the
14 company of other persons and after they attended at a
15 bar he became involved with a vehicle some kilometers
16 out of Yellowknife and caused mischief to that vehicle
17 by lighting it on fire when it was, in fact, near
18 another parked vehicle in which there had been stored
19 some propane tanks. By good fortune the owners of the
20 other parked vehicle observed the fire after hearing
21 some yelling or screaming associated with the vehicle
22 that was on fire and they were able to put the fire
23 out before any damage occurred other than to the
24 vehicle that had been put on fire. That vehicle was
25 owned by one of the persons with whom Mr. Sheehan had
26 been travelling earlier and with whom he had been
27 drinking at a bar throughout that evening on January

1 the 23rd.

2 The Court is somewhat disturbed by the fact that
3 Mr. Sheehan, when intoxicated, indicated that if
4 certain things occurred in the future the vehicle
5 would be set on fire again but that the friend that he
6 had known for a couple of years would then be inside
7 the vehicle. And I'm concerned about that statement
8 in regard to this lighting the vehicle on fire and
9 this offence of mischief because the accused comes
10 before the Court showing that he has a tendency
11 towards violence as recently as November 1988 when he
12 was convicted of assault. At that time it was
13 probably a minor assault but it was still an assault
14 and I say it was minor because it was a \$300 fine as
15 compared to other charges of wounding with intent in
16 1972 and assault causing bodily harm in 1979 and then
17 in 1985 aggravated assault.

18 I think Mr. Sheehan has to take into account that
19 he must be a person that either becomes violent with
20 alcohol or should attempt to take some counselling
21 because he still hasn't overcome his past, which is
22 obvious from his record that he has something in his
23 history that causes him to become upset and
24 violent. It is only hoped, therefore, that he will
25 have enough sense to get to the point, now that he's
26 37 years of age, to take some counselling because he
27 has a long life yet to live.

1 The other point made by Crown counsel which the
2 Court must consider, of course, is that this is the
3 third impaired driving charge or similar charge for
4 the accused in that in 1988 he was driving while his
5 ability was impaired in June and was convicted of that
6 offence, and then again in September was convicted of
7 the same offence and was sentenced to 18 days
8 intermittently on the charge. He has also been
9 convicted of driving while suspended or disqualified
10 in both 1988 and 1989 and January of '89 spending 30
11 days in jail in Edmonton. So it is his third offence
12 of that type as well.

13 Mr. Justice Richard has recently in the Baffin
14 area, within the last six months, imposed an 18-month
15 jail sentence on a person who was charged with
16 impaired driving for the -- I believe the 5th offence,
17 and it would indicate to me that the Territorial
18 Courts, the lower courts must be directed by
19 that. Repeat offenders on impaired driving charges
20 are subject to longer terms of incarceration and more
21 serious penalties and sentences each time they come
22 back to court.

23 I think, therefore, Crown counsel has been very
24 gentle in the recommendations being made noting that
25 these matters are being dealt with on a summary
26 basis. Defense counsel is suggesting even a shorter
27 term in the vicinity of a minimum which I believe

1 under the circumstances might be inappropriate because
2 of the aggravation that develops on sentencing from
3 the fact that there are two previous convictions for
4 similar offences, not just the fact that the accused
5 also was operating while his license was
6 prohibited. I must take into account the totality of
7 the situation, and must recognize that the maximum
8 sentence for the mischief charge would be a six-month
9 jail term because the accused is being dealt with by
10 summary conviction proceedings.

11 In this instance I feel that the accused had been
12 very fortunate in having the proceedings selected in
13 that regard because the circumstances of this offence
14 of lighting a vehicle on fire when the accused had no
15 specific argument, it would appear, with the owner of
16 the vehicle although he might have been upset on that
17 occasion while intoxicated because of circumstances he
18 found his commonlaw wife in with other persons, there
19 was still no logic or reason to light on fire the
20 vehicle of a person who was not the sexual aggressor
21 on that occasion.

22 The accused has regular employment and earns a
23 good living as a crane operator. He has a commonlaw
24 wife who is unemployed and therefore I presume from
25 that, that he has been supporting her. Somebody else
26 is going to suffer other than the accused since he
27 will be required to attend in jail.

1 Service of a notice was acknowledged on the
2 accused which requires at least a three-month period
3 in jail for the impaired driving charge before the
4 Court today. I feel that under the circumstances,
5 this being the third offence of a similar nature, that
6 something more than the three months would be
7 appropriate on this charge. In taking into account
8 the totality of the circumstances, I am going to
9 impose consecutive sentences of a lesser length than
10 what might be appropriate for each of the charges
11 individually, but which I expect would total what
12 might be appropriate for the combination of the
13 offences before the Court.

14 On the impaired driving charge then I'm going to
15 impose five months in jail. Before we complete the
16 sentences, Mr. Sheehan, have you anything that you
17 wish to say to the Court?

18 THE ACCUSED: No.

19 THE COURT: On the driving while disqualified I'm
20 going to impose one month in jail to run
21 consecutively. The license, of course, of the accused
22 must be cancelled and in this instance I'm going to
23 cancel it for a period of three years. That will be
24 operating a "motor vehicle" cancelled for three
25 years. On the mischief charge although I feel that
26 the charge, itself, individually should draw a much
27 more severe penalty than I'm going to impose today, as

1 I've said I've taken into account the totality of
2 charges and on that charge I'm going to impose an
3 additional two months in jail. That will run
4 consecutively. Mr. Sheehan, you should be required to
5 participate in some alcohol counselling when you
6 finish this period of time.

7 THE ACCUSED: Pardon, I didn't understand?

8 THE COURT: Do you feel that it might be worth
9 your while or might be helpful to you if I require you
10 attend for alcohol counselling for a few months?

11 THE ACCUSED: Yeah, I guess so.

12 THE COURT: All right. I'm going to also place
13 you on probation for a period of six months. I'm
14 making that a very short time because after you attend
15 counselling for a short period of time it will be up
16 to yourself. There is no sense in the Court requiring
17 any longer than that during which time I'm going to
18 require that you report to the probation officer when
19 and as directed and that you shall participate in any
20 alcohol treatment or counselling programs recommended
21 by the probation officer. Do you understand all
22 that?

23 THE ACCUSED: NODS IN THE AFFIRMATIVE

24 THE COURT: You'll have to turn your -- of course
25 you don't have a driver's licence on you at the
26 moment, but the Clerk will be preparing a prohibition
27 order and you'll be required to sign that.

1 MR. MCWHINNIE: There is the issue, Sir, of a Victim
2 of Crime surcharge.

3 THE COURT: Yes, under the circumstances the
4 accused is going to be in jail for some period of
5 time, it would seem to me there will be hardship on
6 both the accused and others if they were to have any
7 surcharge imposed.

8 MR. MCWHINNIE: Thank you, Your Honour.

9 MR. REGEL: Your Honour, might the warrant also be
10 endorsed with recommendation that accused be given
11 alcohol treatment while in custody?

12 THE COURT: Yes. Madam Clerk, will you ensure
13 that on the warrant there is a recommendation for
14 alcohol counselling if the accused wishes to
15 participate.

16 MR. MCWHINNIE: In respects of Counts 2 and 4, Sir, on
17 the four-count Information, there is no evidence
18 before you and I would ask you to dismiss and in
19 respect of the single-count Information alleging an
20 offence of uttering threats, I believe there has been
21 no plea entered as yet so I would ask that that matter
22 be withdrawn.

23 THE COURT: Thank you.

24 MR. MCWHINNIE: I believe, Sir, that that is your
25 docket for this morning.

26 THE COURT: Thank you.

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Certified Pursuant to Practice Direction #20
dated December 28, 1987.

Sandra Kamitomo

Sandra Kamitomo
Court Reporter