

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

BRIAN KENNY

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Submissions and Sentencing of Brian Kenny held before His Honour Judge R.M. Bourassa, sitting at Fort Franklin in the Northwest Territories on Friday, March 4th, A.D. 1988

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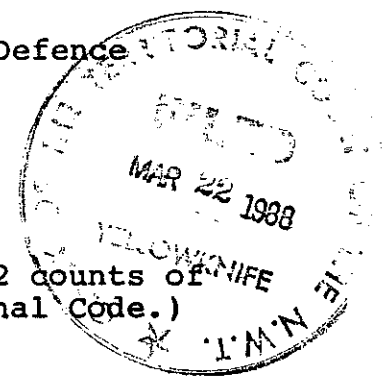
APPEARANCES:

MR. T. HUMPHRIES: Counsel for the Crown

MR. D. SPALDING: Counsel for the Defence

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(Charges under Section 171, Section 3FFLPR, 2 counts of Section 666, and Section 237(b) of the Criminal Code.)



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1 MR. HUMPHRIES: Your Honour, all the offences  
2 individually are not particularly serious offences. I'm  
3 showing Mr. Spalding the record.

4 MR. SPALDING: The record is admitted.

5 THE COURT: Exhibit 1.

6 MR. HUMPHRIES: However, Your Honour will see that on  
7 the record Mr. Kenny has had for some time an alcohol  
8 problem -- at least a problem with alcohol and the law,  
9 going back to 1985. There are several consuming and  
10 unlawful possession of liquor and so on on his record.  
11 Generally, fines have been levied for those offences. He  
12 also has on his record, sir, a joy-riding offence in 1984  
13 and a joy-riding offence in 1987, those being vehicle-  
14 related offences, but not liquor and vehicle-related  
15 offences. Sir, the offences, having in mind first of all  
16 the breach of probation, having in mind the reasons for the  
17 probation order which is to try to first of all help Mr.  
18 Kenny work his life's problems out with counselling and so  
19 on, and second of all to simply have an incentive to keep  
20 out of trouble. Dealing with those two breaches of  
21 probation first, sir, the breaches are, in my submission,  
22 fairly serious breaches. Again, he does have breaches of  
23 probation on his record going back to 1984 and 1985 and  
24 1987, so he's no stranger to a probation order, and in my  
25 submission, sir, he should know what it means and that he  
26 has to obey it. In my submission, there should be a term  
27 of incarceration. The probation order which was breached

1 specifically regarding the alcohol counselling. That, in  
2 my submission, is the more serious one. The other one went  
3 along with the driving, the drinking-and-driving offence,  
4 and it is serious. I'm not saying incarceration is not  
5 appropriate for that one either. As far as the cause of  
6 disturbance was concerned, I am aware that one of the  
7 coaccused was sentenced -- in fact, they all have been  
8 sentenced, but one of them received a fine of \$150, and in  
9 general, sir, the fight was enough to cause 50 or 60 people  
10 to watch, and there was some injury which ensued from the  
11 fight.

12 THE COURT: What were the dispositions of the  
13 other ones?

14 MR. HUMPHRIES: Sir, they were dealt with in J.P.  
15 Court, and I'm actually not sure -- I do understand they  
16 were dealt with by way of a fine; however, I'm not  
17 suggesting that anything different should be done in Mr.  
18 Kenny's case.

19 Regarding the drinking and driving, the readings were  
20 not particularly high, in fact, they were low and there is  
21 no history of drinking and driving on the record. I'm  
22 suggesting that a fine would be appropriate to deal with  
23 that matter.

24 In totality, sir, I'm suggesting that a fine would be  
25 appropriate to deal with the drinking, driving, and cause of  
26 disturbance and incarceration would be necessary to deal  
27 with at least one of the breaches of probation.

1           Regarding the liquor prohibition regulation offence, in  
2 my submission, sir, considering the record, in my submission  
3 a short term of incarceration would be appropriate, but it  
4 also might be dealt with by way of a substantial fine.

5           Those are my submissions.

6 THE COURT:                   Thank you. Mr. Spalding?

7 MR. SPALDING:               Thank you, sir. Your Honour, in  
8 reply to my friend's submissions and with respect to the  
9 circumstances, it's my understanding from the investigating  
10 officer that the fellow in the cause of disturbance who got  
11 a \$150 fine had a longish record, another who had --

12 THE COURT:                   There's 30 on your clients record,  
13 perhaps the bottom end of longish.

14 MR. SPALDING:               Yes, I recognize that.

15           Another -- just so you have some idea of what the  
16 range was, was a \$50 fine.

17           With respect to the blowing overcharge, I believe my  
18 friend's submission has been fair. I do submit that it is  
19 significant that the impairment appears to have been quite  
20 low, it is a low reading. It is the first offence of that  
21 nature on Mr. Kenny's record.

22           With respect to the breach of probation, I've talked  
23 to Mr. Kenny about the significance of that order. I  
24 submit that in the facts before the court, he hasn't  
25 demonstrated open defiance. On the contrary, he does tell  
26 me that he is serious about his alcohol problem. He  
27 expects to undergo counselling and in fact did make some



1 inquiries and attempt to arrange a stay at Delta House  
2 earlier this year. It didn't pan out and I assume it didn't  
3 because the charges haven't been dealt with. He also is  
4 willing to continue to go and start presuming his alcohol  
5 counselling sessions, although he does say he doesn't like  
6 dealing with people in the community who he knows but as a  
7 term of a court order, I've impressed upon him it has to be  
8 filed and he's to go along with that until these matters are  
9 all dealt with.

10 Mr. Kenny is 20 years old. He has always lived in Fort  
11 Franklin with his parents. He reached Grade 10 in school  
12 and he stopped going to school in 1983. He says that he did  
13 all right in school until he started drinking. In fact, he  
14 was kicked out of school because of his drinking. He says  
15 he started drinking when he was about 13 years old. I can't  
16 say, Your Honour, from speaking to him -- he strikes me as  
17 someone who is quite an intelligent individual. He has two  
18 sisters and five brothers. He says that his -- some of his  
19 brothers and sisters drink but not very much, and his  
20 parents only drink on special occasions. He does recognize  
21 that he's in a great deal of trouble and he's not proud of  
22 his criminal record, and as I say, he does want to do  
23 something about his alcohol problem. Since he left school,  
24 he's had various jobs in Fort Franklin. He has worked for  
25 housing on construction. He's worked at the Bay store.  
26 He's worked helping the electricians and plumbers and NCPG.  
27 He sometimes traps in Winter. Last year he trapped for

1 three weeks with his uncle and this year he's trapped for  
2 several weeks. This year he earned \$3500 as an advance on  
3 his first lot of furs, and he will probably be getting  
4 considerably more when all of his furs are sold.

5 He owns his own skidoo. He does help to pay family  
6 bills with the money he earns from trapping. His father  
7 works full time on water delivery and has for five years in  
8 Fort Franklin. His mother is at home.

9 Finally, Your Honour, I would point out in response to  
10 my friend's submission, that incarceration may be necessary  
11 for the breach of probation, that the court should be  
12 cautious not to end up punishing in effect for what the  
13 record is and it's certainly not a record to be proud of.

14 In my submission, the court should sentence only on the  
15 facts of the sentence before the court. I would also point  
16 out that Mr. Kenny realized that he was in jeopardy until  
17 all of these charges are dealt with when he came before the  
18 court on January 22nd. He has had the impaired charge in  
19 Fort Norman. He has, he says, stayed out of any kind of  
20 trouble involving fights or causing a disturbance or  
21 drinking since that time. He knows he has to in order to  
22 come before the court and expect to be dealt with reasonably  
23 at his next appearance.

24 Those are my submissions.

25 THE COURT: Thank you Mr. Spalding.

26 Well, I'd like to pick a nice word, but I think it's  
27 quite clear that Mr. Kenny is a drunk and as long as he's a

1 drunk, he's going to be in and out of the courts. He has  
2 over 30 convictions since 1984.

3 Mr. Kenny, you've paid -- I don't know what \$1500,  
4 a thousand dollars to the government by way of fines.  
5 You've spent a total of five, six, seven months in jail.  
6 All you have to do is stop drinking, but until you do that,  
7 you can start on your next 30 convictions. Unfortunately,  
8 there's nothing the court can do that hasn't been tried to  
9 stop you from drinking. It's all up to you; if you don't stop  
10 drinking, you can expect to have a cell reserved for you in  
11 Yellowknife. The solution to your drinking problem is  
12 yours and yours alone.

13 The court tried to help you with the probation order,  
14 perhaps optimistically, but it tried to help you by at least  
15 directing that you go to counselling in the community and  
16 you comply with the directions of the court worker. You're  
17 not even prepared to do that. I think in some ways you're  
18 a very lucky man to have a strong community like this.  
19 There are other communities where people don't give a toot  
20 and instead of trying to hide from the community, because  
21 you're really not hiding anything because everyone knows  
22 everything about you anyway. Instead of trying to hide,  
23 which is a phony deal in the first place, you should try and  
24 draw strength from the community you come from.

25 Anyway, that's the extent of my Sunday school lecture,  
26 Mr. Kenny. You've been in court enough and I suppose you've  
27 received enough of them.





1 With respect to the charge of causing a disturbance,  
2 stand up please.

3 There'll be a fine of \$150, in default of payment 15  
4 days in jail.

5 With respect to the liquor prohibition regulations,  
6 this community has chosen to be dry. The court will act  
7 aggressively to protect this community's wish and desire.  
8 There will be a fine of \$350, in default of payment 30 days  
9 in jail.

10 With respect to driving with over 80 milligrams of  
11 alcohol, there will be a fine of \$750, in default of payment  
12 65 days in jail.

13 With respect to the breach of probation of the same  
14 day, there will be a term of imprisonment of one day. With  
15 respect to the breach of probation on the first order,  
16 requiring you to attend counselling -- Mr. Kenny, if you  
17 can't for the life of you live with a probation order, all  
18 you have to do is ask to have it changed because we all  
19 recognize we can't do anything with a drunk, if he's not  
20 going to do anything on his own, but you will not -- the  
21 court will not allow you to deliberately ignore it, take up  
22 the probation worker's time, take up everyone's time and  
23 then thumb your nose at the system. On that, there will be  
24 a term of imprisonment of two months. I want you to clearly  
25 understand if you're ever put on probation in the future, if  
26 you can't comply with the terms when the court gives them,  
27 stand up and tell the court right then and there. If you



1 are subject to a period of probation, then you best know  
2 today, as I would have hoped you would have learned in the  
3 past, that you obey those orders, failing which the  
4 repercussions will be harsh if necessary.

5 In each case with respect to the default time, it will  
6 be consecutive to the term of two months. Do you require  
7 time to pay the fines?

8 THE WITNESS: Six months.

9 THE COURT: Well, I'll give you three months to  
10 pay the fines, Mr. Kenny. You can always ask for an  
11 extension, if you're partially successful and are unable to  
12 pay off the balance.

13 MR. HUMPHRIES: The one day will be concurrent, sir;  
14 is that right?

15 THE COURT: Yes.

16 The accused will be prohibited from driving a vehicle  
17 anywhere in Canada for a period of three months. If you  
18 have a license, Mr. Kenny, surrender it to the clerk now.  
19 Do you have a driver's license?

20 THE WITNESS: Not with me.

21 THE COURT: You're a prohibited driver as of now.

22 Is that everything on that matter?

23 MR. HUMPHRIES: Yes it is, sir.

24 (SENTENCING CONCLUDED)  
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I, Karen Myren, Court Reporter, hereby certify that I attended the above Sentencing and took faithful and accurate shorthand notes and the foregoing is a true and accurate transcript of my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 16th day of March, A.D. 1988.

*Karen Myren*  
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Karen Myren,  
Court Reporter.

KM/mjp