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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

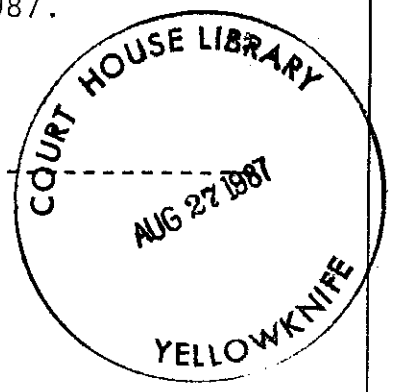
IN THE MATTER:

HER MAJESTY THE QUEEN

VS

KENNETH WALTER PUTNAM

Transcript of Proceedings of an Oral Judgment on
Sentencing delivered by His Honour Deputy Judge
G. PRICE, sitting at Fort Simpson in the Northwest
Territories on Tuesday, June 23, A.D. 1987.



APPEARANCES:

MR. R. PEACH	Counsel for the Crown
MR. C. REHN	Counsel for the Accused

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1 THE CLERK OF THE COURT: Kenneth Walter Putnam.

2 THE COURT: Firstly, I would like to thank Counsel for their
3 helpful remarks.

4 Mr. Putnam stands convicted that he on the 7th of
5 January at Fort Simpson assaulted Troy Wayne Bradbury, con-
6 trary to Section 245 of the Criminal Code. The Crown has
7 proceeded by summary conviction offence.

8 I have taken some brief time to consider the mat-
9 ter. Appreciating that I do not have an extensive library
10 here, I have not been able to located any Northwest Territor-
11 ies Supreme Court or Court of Appeal decisions; although, I
12 am advised by Counsel that the Fallowfield decision from the
13 British Columbia Court of Appeal in 1973 has been generally
14 relied upon in this jurisdiction.

15 The facts are straightforward. It appears that
16 Mr. Putnam was provoked. It appears that his actions were
17 not premeditated. It appears his actions were hasty and arose
18 out of his impression of a threat to his family. Specifically,
19 in response to a question put to him by Mr. Bradbury: "Are
20 you threatening me?" the accused reacted and slapped Bradbury.
21 The evidence is clear that the slap was minor in the sense
22 that it did not cause any injury. There is no evidence of
23 any medical attention. In fact, the senior Officer observed
24 Bradbury later; and the slap seemed to be unascertainable or
25 at least any evidence of it.

26 The position of the Crown is that a fine is
27 appropriate and that this particular accused should receive

1 no special treatment because he is a serving Officer of the
2 Royal Canadian Mounted Police. In other words, within the
3 eyes of the community, there should be no perceived difference
4 and no special exception made for this particular accused
5 that any other member of the public would not receive. The
6 position of the Defence is that a discharge is appropriate.

7 I make some general observations on discharges.
8 I make first reference to Stuart's Canadian Criminal Law
9 and the general observation at page 483 of the learned author
10 that:

11
12 For many, the traumatic experience
13 of a first appearance in a criminal
14 trial court is a sufficient deterrent.
15 It makes eminent sense for judges to
16 be liberal in the exercise of their
17 discretion to discharge where the
18 social consequences of the conviction
19 are deliberately minimized.

20 I take "social consequences" in the sense to be just another
21 way that the Crown has put before the Court the submission
22 that this accused should get no special treatment. Do, then,
23 the social consequences warrant a discharge?

24 Coming closer to home and still making a general
25 observation about the use of discharges, I make reference to
26 Ruby's Second Edition of Sentencing at page 211 where the
27 learned author comments on the Griffin case. This case arose
in Prince Edward Island. It involved a young police officer
who was escorting a drunken prisoner to the cells and struck

1 the prisoner in the face and injured him. His eye had to be
2 surgically removed. I hasten to add that, clearly, on the
3 circumstances of this case, that type of injury did not
4 result. The Court of Appeal looked at the discharge provi-
5 sions; and Mr. Ruby in commenting on the Court of Appeal's
6 approach to this particular situation observed when a dis-
7 charge was granted, on appeal, that:

8
9 One would hope that the fact that
10 the accused was a police officer
11 did not in itself influence the
12 judgment towards leniency.

13 Again, I take that observation to be just another way of
14 putting the Crown's position that this accused should get no
15 special treatment.

16 Having made those general observations, I move now
17 to the particulars of this offence. The first hurdle that
18 the accused must meet is that the Court must be satisfied
19 that a discharge is in the best interests of the accused.
20 Obviously, if it is not in his best interests, that is the
21 end of the matter. Only if that hurdle is met need the Court
22 move to the second hurdle which is that the granting of a
23 discharge is not contrary to the public interest. Coming
24 back, then, to the first hurdle, having reference again to
25 Ruby on Sentencing, I note that the author has observed at
26 page 214 with respect to "Factors Considered In Assessing
27 'The Best Interests Of The Accused'" that future considerations,

1 that have played a part in the Court recognizing that it is
2 in the best interests of the accused that a discharge be
3 granted, have included the possible jeopardy to a career.
4 The position advanced by the accused is that this situation
5 is going to be of no benefit to the Officer in his career
6 development and that the registration of a conviction in
7 lieu of a discharge would create some possible jeopardy, and
8 I accept that. So, in my view, the first hurdle that the
9 accused must meet has been met; and in fact, in fairness to
10 the Crown, the Crown Prosecutor did not take issue with the
11 first hurdle and, in fact, directed his remarks to the
12 second hurdle that must be met: that a discharge is not
13 contrary to the public interest.

14 Generally, in having regard to the Fallowfield
15 decision at page 654 as summarized in Martin's Criminal Code,
16 a number of factors have been considered:

17
18 . . . the first condition would
19 presuppose that the accused is a
20 person of good character, without
21 previous conviction, that it is
22 not necessary to enter a conviction
23 against him in order to deter
24 him from future offences or to
25 rehabilitate him, and that the
26 entry of a conviction against him
27 may have significant adverse repercussions.

28 I accept in these particular circumstances that those factors
29 are present. The material before me, Exhibit S-1 on sentencing,

1 indicates that this particular accused is a person of good
2 character without previous conviction. I am of the view that
3 he needs no rehabilitation, the entry of a conviction is not
4 necessary to deter him from future offences, and that the
5 entry of a conviction may have significant adverse repercus-
6 sions for him.

7 Ruby assists again in observing at page 216 of his
8 text that in an assault situation--and having particular
9 regard to the Sanchez-Pino case, which is also referred to at
10 page 654 of Martin's Criminal Code--a discharge would not be
11 appropriate in a situation which was not the result of a
12 sudden, momentary impulse. In the Sanchez-Pino case, the
13 theft was of a number of articles from different places.
14 There was premeditation. It was not some momentary reaction
15 or, as in this case, what I choose to call "overreaction to
16 a situation."

17 In my view, it is important that there was some
18 provocation. So, in the result, the issue really comes down
19 to whether or not the Court should conclude that deterrence
20 of others would in any way be diminished by a failure to
21 impose a formal conviction. Will the people of Fort Simpson
22 if a discharge is granted be of the view that this particular
23 Police Officer has received something that because of his
24 position other accused persons coming before this Court would
25 not receive?

26 I am of the view that a discharge is appropriate
27 in this case. I have a discretion to exercise under

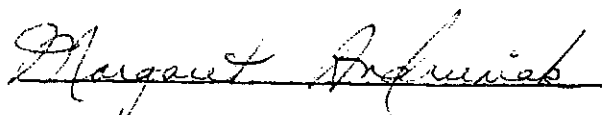
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Section 662.1 of the Code. I exercise this discretion in favour of the accused, primarily because of the nature of the assault and the provoking circumstances surrounding it. In my view, any other member of the public coming before this Court in these particular circumstances would have been treated by this Court in the same way. I attach no special importance to the fact that this accused was a serving Member of the R.C.M.P.

Would you stand, sir.

I impose a conditional discharge. The terms will be that you enter into a probation order to keep the peace and be of good behavior and that you will report before the Court when you are required to do so. The term of the conditional discharge will be a term of three months, and I impose a further term that you serve 10 hours of community service work under the direction of the probation officer here in Fort Simpson.

Certified a Correct Transcript:



Margaret Andruniak
Court Reporter