

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

IN THE TERRITORIAL COURT OF THE  
NORTHWEST TERRITORIES

-----

REGINA

v.

NOAH NOWDLUK

-----

JUDGEMENT AND  
REASONS FOR JUDGEMENT

-----

PRESIDED OVER BY  
HIS HONOUR JUDGE T. DAVIS

-----

Tom Humphries, Esq.,	Appeared for the Crown
Neil Sharkey, Esq.,	Appeared for the Defence
Sandra Haslett	Court Reporter

-----

FROBISHER BAY  
NORTHWEST TERRITORIES  
FEBRUARY 18, 1986



1 THE COURT:

2 Noah Nowdluk who is 25 years of age  
3 presently lives with the victim of an assault which caused  
4 his father bodily harm when his father tried to stop the  
5 accused from fighting with his common-law wife and hitting  
6 his, the accused's, mother and wife.

7 The accused at approximately 1:00 a.m. in the morning  
8 of December 25th was highly intoxicated, and he struck his  
9 father, knocked him to the floor and kicked him, and in  
10 addition thereto actually bit his father's lip to the extent  
11 that it was in need of substantial medical treatment to sew  
12 the completely split lip together which resulted, as the  
13 medical report has said, or a short medical letter has said,  
14 in a reasonably satisfactory result, but it is still obvious  
15 there has been injury to the lip of the victim.

16 The victim and the accused have now again resumed  
17 living together in that the son is living with the father,  
18 and the father has indicated he has forgiven his son for  
19 this injury and for the assault on himself. The accused  
20 does not remember assaulting others but was aware of the  
21 fact his father had been injured, and after waking up in  
22 gaol while he was still in custody had been concerned about  
23 the well being of his father.

24 The accused effectively has no criminal record in that  
25 I am not concerning myself at all with the causing a  
26 disturbance charge in 1980 for which he was fined \$50. His  
27 common-law wife has moved out, and he, therefore, has at the  
present time suffered the loss of his family situation. The



1 accused himself has very little memory of the circumstances  
2 of the offense which seems to have occurred without any  
3 premeditation, but was, as has been explained by the Crown,  
4 rather a bizarre activity that was more of a reaction than a  
5 fight in which the accused was involved, not intended in  
6 advance of what was taking place at the time.

7 The accused also seems to have support from a number of  
8 people in that his father has forgiven him and a former  
9 employer has appeared in court to give support to the  
10 accused. It does seem to be out of character for this to  
11 happen, although the accused admits to periodic drinking to  
12 excess.

13 My reading of the various cases on assaults ordinarily  
14 leads me to the belief that a period of time in gaol is  
15 necessary on serious assault charges, but because the  
16 accused is attempting to get his own taxi for a taxi  
17 business in Frobisher Bay and presently has a job as a taxi  
18 operator, I am inclined to consider intermittant sentencing  
19 on a gaol term.

20 Would that be of any value to the accused at this time,  
21 Mr. Sharkey, if I had to consider a short time in gaol?

22 MR. SHARKEY: I don't know when he works. He  
23 gets Monday and Tuesday off, two days on, one day off.

24 THE COURT: As pointed out by the Crown it is  
25 the duty of the court to impose a sentence that not only  
26 protects the public but has consideration for the accused  
27 and circumstances of the accused, so that they have to



1 balance the need for public protection and deterrence of  
2 crime against the specific needs of the accused and not  
3 impose a gaol term that will be excessive or more of a  
4 burden than is appropriate for the offense itself  
5 considering the circumstances.

6 I don't see how it would be possible for me to not  
7 impose some sort of period of time in gaol, and under the  
8 circumstances I am going make it so short that it will do  
9 nothing other than try to indicate to the accused that this  
10 type of offense is something the court can not permit.

11 On the term, I am going to impose 14 days in gaol. In  
12 addition thereto I am going to place the accused on  
13 probation for a period of one year, and on the probation  
14 order I am going to require that he restrain absolutely or  
15 be prohibited absolutely from the possession or consumption  
16 of alcohol for a period of four months.

17 MR. HUMPHRIES: If I could direct Your Honour's  
18 attention to the provision of Section 98.

19 THE COURT: Again Section 98(1) of the Criminal  
20 Code has not been amended as had been expected, it still  
21 requires the order against the accused, Mr. Noah Nowdluk,  
22 restricting him from possession of any explosive substance  
23 or weapons or firearms or ammunition for a period of five  
24 years.

25 Do you have any rifles or --

26 MR. SHARKEY: He is a hunter.

27 THE COURT: He is a hunter. There is precedence

1 in the Northwest Territories to hear submission or evidence  
2 on if he is in fact a hunter enough to be subject to this  
3 particular --

4 MR. SHARKEY: He does not do it for a livelihood,  
5 as a sole livelihood

6 THE COURT: I think Justice Marshall on one  
7 case found that if he did it in support of some of the  
8 family needs, that it would not have to be as a sole method  
9 of livelihood and he would still be entitled.

10 Do you want me to postpone the balance of the  
11 sentencing on that aspect of the matter until we hear  
12 submissions at a later time?

13 MR. SHARKEY: We can look at it, sure. It might  
14 be worthwhile

15 THE COURT: Maybe we will adjourn the balance  
16 of that application for restriction under Section 98(1)  
17 because I do feel I am bound by that unless we have  
18 something that supports it now.

19 MR. SHARKEY: I do not think I do, but maybe it  
20 bears a closer look.

21 THE COURT: When do you think we might bring it  
22 back on that aspect of it, April?

23 MR. SHARKEY: I would have to sit down and talk  
24 to Noah about his background and how much he hunts.

25 THE COURT: What time in April are we back  
26 here?

27 MADAME CLERK: April 7th at 7:00 p.m.



1 THE COURT:


2 Maybe we can put it over until  
3 April the 7th at 7:00 p.m. for consideration of the futher  
4 portion of the appication under Secion 98(1).

5 (CASE ADJOURNED)

---

6 I, Sandra Haslett, Court Reporter, hereby certify that  
7 I attended the above Examination and took faithful and  
8 accurate shorthand notes and the foregoing is a true and  
9 accurate transcript of my shorthand notes to the best of my  
10 skill and ability.

11 Dated at the City of Calgary, Province of Alberta, this  
12 23rd day of October, A.D. 1986.

13  
14  
15   
16 Sandra Haslett CSR(A)  
17 Court Reporter.