

IN THE TERRITORIAL COURT
OF THE
NORTHWEST TERRITORIES

R E G I N A

VS

P A

Transcript of Excerpt of Hearing held before His Honour
Judge T.B. Davis, sitting at the Courthouse, Frobisher Bay,
in the Northwest Territories, on Wednesday, June 18th,
A.D. 1986.

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| L.J. Wall, Ms., | Appeared for the Crown, |
| N. Sharkey, Esq., | Appeared for the Defence, |
| Carolyn Ouellette, | Court Reporter. |

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1 MR. SHARKEY: Sir, you had asked P if he
2 understood some of the reasons why he is here today, the
3 programs that the jail had for him; and he understands that
4 he was given time last year as an adult in the Criminal
5 Court, and then he got 14 months, two months secure custody
6 and 12 months open custody as a young offender. He
7 understands that his adult time is up and a decision has
8 to be made if he is going to go into an open custody
9 facility or if he is going to serve his custody either
10 a secured portion of it or just the open part of it now
11 in the jail. So, he understands that his adult time that
12 he got P is up and now we have to decide if he still
13 wants to do his -- among other things, if he wants to do
14 his time in B.C.C. or that will be okay.

15 The papers before you which brings this hearing on
16 may make reference to Section 28, but we think that this is
17 a hearing under Section 24(15), and for the record, the
18 Defence does not take any objection to short notice and I
19 was made aware of it by the Department of Social Services
20 that they would be bringing this application on, so, we
21 consider this a proper hearing before you under Section
22 24(14), for the record.

23 My friend has indicated that she is not sure that a
24 reading of Section 24(14) when we are dealing with open
25 custody, our Court is with the spirit of Legislation or the
26 intent of the drafter of the Legislation, I thank her for
27 those comments on behalf of my client because I share them,



1 but I do differ in one respect. I think that it is clear
2 what the intent of the Legislators was or the drafters
3 was in drafting up the Legislation. I think their purposes
4 is clear and that is a side comment to create a cottage
5 industry and confusion and they certainly have done that;
6 but nonetheless, if Section 24(14) says that where a young
7 person is committed to custody, a provincial director may,
8 upon notifying the young person, have a hearing to see if
9 the custody can be finished in adult facilities, and if the
10 Court considers it to be in the best interest of the young
11 person or the public -- that that be done. Now, if you
12 don't order that, he would do time in an open custody
13 facility. If you do order it, he will do it at B.C.C.
14 It looks like the only open custody facility suitable
15 would be not on Baffin Island because of the people he
16 knows here.

17 This makes me -- puts me in a couple of positions as
18 counsel because I am both his lawyer as well as acting as
19 a judge, I personally find that uncomfortable in giving
20 him the best advice, so, I listen to him very carefully.
21 P would like to stay on Baffin Island. He would like to
22 go to general population if he is in the jail. He
23 understands that there is a program set up for him,
24 although he does not understand the specifics of it, at
25 least in my brief conversation with him. It would be fair
26 that while I reviewed on his behalf the survey of summaries
27 and services available which has been placed in the report,



1 the review report by the youth worker, Mary-Lou
2 Sutton-Fennell had agreed that the program designed by
3 Jan Riddell would be in his best interests and he is
4 willing to go through with it. In the long run, in the
5 end, again, if a person is moved from young-offender custody
6 to adult custody and here it is going to be a year, he will
7 lose some of the remission he would otherwise get as an
8 adult, I think that the section is designed to catch the
9 secure custody situation more ideally. I think it is
10 designed to catch the situation where the offender may be
11 16, where he is sentenced, and only has a short time left.
12 Here we have a person who the Crown does not apply to raise,
13 and this is not a criticism at all of the Crown, but that
14 the state does not apply to raise him and then he winds up
15 probably doing more time as a youth than he would if he
16 were sentenced as an adult with the benefit of remission.

17 All of that having been said, again, I scratch my
18 head here and try to act in P's best interest, in the
19 long run at the end of the day, we take no objection to
20 the position that it may be in his best interest and he
21 does want to remain on Baffin Island. Accordingly, we do
22 not oppose the application made on behalf of the Department
23 and the recommendations contained on Page 3 of 3.

24 THE COURT: Thank you.

25 Having heard the submissions made on behalf of the
26 application that is before the Court, that is an
27 application to have P A serve the balance of



1 his custodial sentence selected in the Youth Court, in an
2 adult facility, I am satisfied that it appears to be in the
3 best interest of the accused because of his attitude and
4 his desire to remain in the Baffin area, and therefore in
5 the Baffin facilities, and I am going to grant the order
6 that is being applied for today, recognizing that there has
7 been a waiver of any notices or required periods of time
8 for notices by both Crown and Defence.

9 I do, however, in making the order ask that Social
10 Services officers sometime within a short period following
11 the next two months, because that is the period in which P
12 has been directed to serve as secure custody,
13 sometime shortly after that period, that the Department
14 contact P with an investigation being made to
15 determine whether or not it would be appropriate for him to
16 remain in adult facilities at that time or whether he
17 again should apply, or he or the Department should apply
18 for reconsideration of the serving of the balance of his
19 time because there are certain advantages that do exist
20 in the Young Offenders' Act, and one of them being, I think,
21 a major advantage even though the Act is somewhat a
22 confusion to us at the moment, does allow to deal with
23 sentences by the same Court rather than having to go to the
24 Appeal Court to review them and to amend them or change
25 them. It may be that since the accused is going to remain
26 within the jurisdiction of the Court, even though he is
27 serving his time in an adult facility, that some




1 amendment to the custodial order might be able to be
2 considered because the provisions of this Act under
3 Section 24, Subsection 14 shall continue to apply in
4 respect of that person, and on that basis I am asking the
5 Department to make that further inquiry and possibly if it
6 is requested by P or recommended by the Department,
7 that we have another hearing on that basis.

8 P, that means that you are going to be serving
9 time in the adult facility and after a few months if you
10 feel that you do not wish to continue to serve it in the
11 adult facility, you can ask Social Services Department or
12 someone at the Correctional Centre to possibly come back
13 and review the matter before this Court. Do you understand
14 that? All right. The Order is so granted then.

15 (ADJOURNED)

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17 I, Carolyn Ouellette, Court Reporter, hereby certify that
18 I attended the above Excerpt of Hearing and took faithful and
19 accurate shorthand notes and the foregoing is a true and
20 accurate transcript of my shorthand notes to the best of my
21 skill and ability.

22 Dated at the City of Calgary, in the Province of Alberta,
23 this 25th day of June, A.D. 1986.

24 
25 Carolyn Ouellette, C.S.R. (A)
26 Court Reporter.
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