

TC 00271
TC CR 86024

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

HER MAJESTY THE QUEEN

AND

MANUEL CLEMENT

Heard at Fort Norman, N. W. T.

Reasons filed: September 16, 1986

REASONS FOR JUDGMENT

of

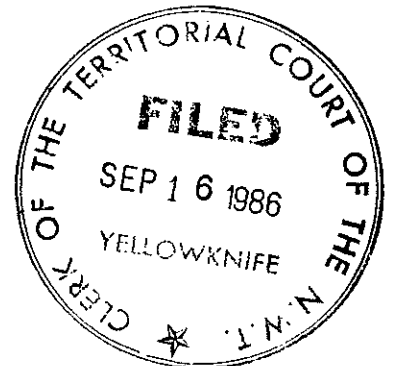
His Honour Judge R. Michel Bourassa

Counsel for the Crown:

Ms. L. Wall

Counsel for the Defence:

Mr. P. Penny



The accused Manuel Clement having elected trial in Territorial Court has pleaded guilty to certain Criminal Code offences namely offences pursuant to Section 228; 82(1)(a); 245; 247(2); 245 and finally 387(4). The offences, in terms of commission, break down into two groupings: a group of offences occurring on the 21st of May, 1986 and another group occurring on the 26th of April, 1986.

The accused before this Court brings with him a long history involvement with the Courts. From 1977 until todays date he has been in conflict with the law on a continuing basis. He has been convicted of serious offences on a number of occasions viz unlawful confinement in 1978, for which he received one year in jail; aggravated assault in 1978, eighteen months in jail; two counts of aggravated assault in 1979; two charges of assault - Peace Officer in 1981; another charge of assaulting a Peace Officer in 1983; in 1984 obstructing a Peace Officer; assault with a weapon - two counts. This record reflects some disquieting aspects of the accused character: a proclivity for violence both toward the public generally and the police. The record demonstrates to me that this accused is an actual and continuing danger to the public generally and to this community specifically.

With respect to the latter there can be no question of the highly disreputive effect that someone like this can have on a community as small as Fort Norman (220 people). The mere presence of this person is enough to make the community tremble.

The presentence report, filed, sets out the accused antecedents in some detail. Hardly surprisingly, he comes from a family that was plagued with alcohol abuse and all of the problems that flow from that. Additionally, he was apparently a victim of that alcohol abuse. However, having said that, and while it may assist in understanding the accused, it is of minimal utility to the Court either as an aggravating or mitigating factor. It is all too common a phenomenon in this jurisdiction and it is not one that can be eliminated or "cured", by the Court or by its sentence. Manuel Clement is the only one who can resolve his personal problems with alcohol. He has had the opportunity and the occasion in the past of making the connection between the abuse of alcohol and conflict with the law and notwithstanding that experience has made no effort to rehabilitate himself. In my view the accused, on the occasions before me, chose to become intoxicated, to a degree, and thereby effectively chose the consequences that follow from his conduct.

No Court simply sentences for the sake of sentencing; rather the Court has certain goals it seeks to achieve in imposing a particular sentence for a particular offence on certain accused. These goals have been traditionally defined as four as set out in **R vs Morrisette**; deterrence, general and specific, reformation of the accused, protection of society, and punishment.

In examining the accused's conduct and his antecedents the offences before me and the accused conduct to date, it is my view that the Court's primary obligation in this case is to impose a sentence that will protect society generally and particularly the community of Fort Norman. Reformation and rehabilitation, while always a hope, is in this case left to the Administrative Boards and Tribunals that are set up within the penitentiary system to address that matter and in that regard I follow **R vs Levesque**. Reformation and rehabilitation forms very little of this Courts goal in sentencing.

With respect to the events of May 21st: I note that in aggravation the accused was on an undertaking at the time of these offences. On all the evidence before me he was not grossly intoxicated although he had consumed some liquor.

The events can perhaps can be most simply described as a night of terror for the whole community. Two families including small children were terrorized by the actions of the accused - terrorized to the point where people were crawling out of windows of their homes to escape from this man. And throughout the actions of the accused, people were actually put in danger of losing their lives. In that regard I'm not referring to an intellectual or theoretical possibility. In fact bullets fired from the accused's gun were missing people, in Corporal Luloff's case, by inches. This accused fired indiscriminately, blind as it were, through closed bedroom doors, walls and out windows without any care whatsoever as to who or what was on the other side. I have to note that this occurred on one occasion at Fort McPherson, resulting in the death of an unfortunate when a bullet fired by someone outside the house went through three walls striking the victim in the head.

While this was not a thought out master criminal plan I don't believe that this assists the accused. The accused was in a rage; he was on a rampage, and bound and determined to strike out at anyone, family members, neighbours, police, or anyone who interfered with him. In that state he could not have been a greater danger to the public. There is

no question in my mind that it is only through the sheerest good fortune that innocent people weren't killed on that night.

In dealing with the particular offences; firstly, with the respect to the charge under 228. There is no question in my mind whatsoever that Manuel Clement wanted to kill or grievously hurt Corporal Luloff. The bullets that he fired at the Corporal were landing one foot away from the Corporals head. This is marksmanship to be feared, this is marksmanship with intent. It would appear that the only reason why Corporal Luloff wasn't in fact struck was that he was able to secure some shelter at ground level and he was able to retreat.

The police are essential members of our community both locally and nationally. They are needed and they are friends of the community. They are the ones that have to deal in a real way and not in a isolated and antispetic way as the Court does, but in a real way with the undesireable elements of our society. They have to protect the law abiding from people like Manuel Clement. It is not an easy job.

The police deserve and are entitled to the protection that the law can offer. We in society ask the police to put

lives at risk to protect all of us and in return for that every potential offender that must be made aware of the fact that if they choose to attack the police in such a fashion as this, that they will receive the harshest of sentences. I am aware, of course, of the case of **R vs Mantla** in Fort Franklin just a few miles from here. I believe that the ultimate disposition of that case must have percolated down to this community. In that case, while the police Constable was attacked by an individual wielding a knife, there was not the danger to his life as there was in the case of Corporal Luloff. I believe that the cases are qualitatively different and believe that the attack on Corporal Luloff warrants a qualitatively different sentence.

With respect to the Section 83 offence; I would suspect that there isn't a home in the Northwest Territories that does not harbour one or more guns - which are an essential element to life and survival here in the North. However, it is a sad commentary on the presence of those guns that more people are apt to lose their lives in the Northwest Territories as a result in acts of violence including shootings, as well as stabbings, woundings, and beatings than any of the other leading causes of death. It must be understood by everyone in this jurisdiction that guns

are tools, tools to live by and survive with. They are not to be resorted to when passions are on the rise, when there is anger, or conflict. The Courts are going to have to impose sentences in order that people clearly understand that the last thing they should do when angry or upset is reach for a gun. Society can not bear the costs and society will not tolerate this kind of violence.

With respect to the remaining offences I would only comment that the attack on the accused's mother is just confirmation of the comments I have made earlier. This accused was totally out of control, prepared to kill, shoot and do violence to anyone who in his way. The confinement of Phillip Clement a small child is again, confirmation of the terrorization that this man was visiting upon this community. That he would take a small child and put him through such an ordeal as the one described by the Crown Attorney clearly demonstrates a complete and absolute disregard by Manuel Clement for anyones safety, feelings, sensitivities, or life.

This Court must strive to reinforce some fundamental values, and reiterate certain lessons which I have alluded to.

I certainly don't want to crush this accused, but I have

to protect society from this kind of violence and deter others that may be similarly inclined.

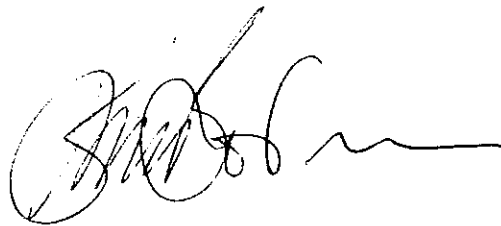
I take into account by way of mitigation that the accused has pleaded guilty, although I question whether there could be any real doubt as to his ultimate conviction on the two significant charges that are before the court. In any event, I do take the plea into account by mitigation. Crown Counsel other than requesting a term of imprisonment and a ten year firearms prohibition, makes no particular submissions as to the length of sentences. Defence Counsel would appear to acknowledge that the term of imprisonment is in order and suggests something in the two year range.

The sentence of this Court is as follows: on the charge of assault in April, 2 months imprisonment; on the charge of mischief, one month of imprisonment consecutive. With respect to the offences in May, with respect to count 1, discharging a firearm with intent to endanger life contrary to Section 228(b), four years imprisonment in Federal Penitentiary. With respect to the charge under Section 83(1)(a), 2 years imprisonment consecutive. With respect to the charge of unlawful confinement of Phillip Clement, 2 years in jail concurrent. With respect to the charge

of assault on Lisa Clement, four months in jail concurrent.

I confirm that I am taking totality into account for all of the offences and believe that six years and three months is an appropriate disposition for all of them in light of that principle.

With respect to Section 98 of the Criminal Code there will be an order prohibiting the accused from possessing any firearms or explosive substances including ammunition for a period of ten years and pursuant to subsection 13 I will allow the accused seven days to surrender any firearms he may own to R.C.M. Police detachment here in Fort Norman.

A handwritten signature in black ink, appearing to read 'R. Michel Bourassa', written in a cursive style.

Judge R. Michel Bourassa