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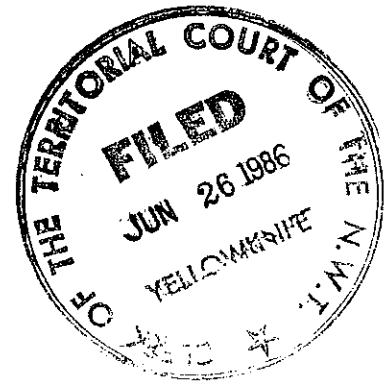
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES ,

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ALEC NILAULAK



Transcript of Proceedings held before His Honour Judge
R.M. Bourassa, sitting at Yellowknife, in the Northwest
Territories, on Tuesday, May 6, A.D. 1986.

APPEARANCES:

MR. T. HUMPHRIES	On behalf of the Crown
MR. R.C. REHN	On behalf of the Defence

THE COURT: Thank you, Mr. Rehn.

This Court has a virtual time bomb on its hands, and really the only tool we have to deal with it is insignificant: - a small twig. The accused comes from a desperate background. The whole sad litany is recited in Dr. Brook's report, and as well in the additional documents set out in Exhibit 2. Previously, Justice Tallis had to deal with this accused, Justice Marshall had to deal with this accused, Social Services have had to deal with this accused. He has been in and out of courts, in and out of care for virtually his whole life. Everyone agrees he needs psychiatric assistance -- the Department of Social Services, Justice Tallis, Justice Marshall, Dr. Seltzer, Dr. Brooks, Dr. Lugtig, myself, Crown, defence -- and yet he doesn't receive it. I cannot under our law impose a "treatment" sentence. I cannot give a man a year in jail because I'm told that a year on a particular program will "cure him". However -- an accused person's -- background, proclivities, sensitivities, are all relevant to sentencing.

It appears that there may be -- appropriate responses -- to treatment of a psychiatric nature or psychiatrically based such as referred to by Dr. Brooks:

I believe that Alec would function well in a situation where there are firm controls and emotional support. In essence, a hybrid between a gaol and a psychiatric facility. It is possible that we can reduce some of Alec's aggressiveness with the use of major tranquilizers, in particular, Mellaril and when control has been established, he would seek increasing privileges and freedom. The only setting that I think of now, is the treatment unit in the Forensic Unit at Alberta Hospital, Edmonton which can be couples with a half-way house.

And further:

Unfortunately, it would seem inappropriate to release Alec to an urban setting such as Edmonton, and it may be that such a facility does not exist in the Territories

I concur wholeheartedly. It is totally inappropriate to pull this man out of his home community and send him down to Alberta on a permanent basis.

Justice Tallis, Justice Marshall both endorsed on their warrants and in the probation orders that he receive psychiatric counselling. Yet he has received, apparently, none. The probation orders contained strong recommendations for psychiatric counselling; if I read Dr. Brooks' report correctly, that occurred on one occasion in Rankin Inlet.

The Court has goals to meet when sentencing: reformation, rehabilitation, punishment, general and specific deterrence and protection of society. With the individual I'm dealing with, here, I don't believe general and specific deterrence as goals will have any impact. Reformation is meaningless. I can't reform

this man. The Court is really reduced to imposing a jail sentence because he did wrong; and it seems sad when there seems to be a crying need for some assistance here and some indication that psychiatric assistance will protect the public.

The offences disturb me. There is apparently an increasing aggressiveness as referred to by Dr. Brooks. The offence of being unlawfully in a dwelling house is coupled with peculiar circumstances: the accused hiding on the floor beside a bed with a knife in his hand. It's disturbing, and it makes me worry; it makes me concerned for the public generally. He leaves without any major confrontation. Of course, the "what ifs" race through one's mind. "What if the woman had been alone? "What if there had been a little bit more liquor consumed?", etc. This man is a danger. I think that is clear in the psychiatric reports.

I can't put him in jail because he is a danger. I can only deal with him on the offences before me. the assault offence is a minor assault; it does not justify by itself a long term of imprisonment, it barely justifies any imprisonment, as despicable as it was. The accused's criminal record doesn't justify an increase the otherwise appropriate penalty. He can't be punished

because he is a former break and enter artist or a former rapist and punished more severely because he commits an assault.

The breach of probation, going along with substantive offence, can be dealt with -- in terms of a term of imprisonment -- but it's marginal.

The accused is going back to his community, he is going to continue to be a problem and a danger to people in that community, and this Court can do absolutely nothing about it. I do not have the tools; and the pleas of the courts -- Supreme Court, Territorial Court, psychiatrists -- have obviously not been heard, I find that most disturbing that this man will be released and go back in the same condition and with the disabilities that he labours under now with absolutely no protection for the public.

I cannot justify in law a lengthy term of imprisonment under the head of "protection of the public", not for these three offences. I cannot prevent crime. I will have to wait -- as it were -- or the courts will have to wait until a serious crime is committed, and then react; and that is indeed unfortunate because if Justice Tallis' pleas had been heard or if those that have the power had reacted or been able to react to

his pleas or Justice Marshall's pleas, a lot of grief may have been prevented. I agree wholeheartedly with submissions of defence counsel; I think it's a scandal for whatever reason -- that there is no psychiatric facility, assistance or programs available in the North. With all of the problems that we have; with all of the problems inherent in dragging some people into totally different lifestyles within one generation; with all of the problems that there are in this jurisdiction -- there is no assistance. The criminal courts end up with the problems, our requests are ignored. People look to the criminal courts for answers yet the answers can't be found here. There is no answer in this court for this individual, or for the public. I am concerned that there is going to be an explosion with respect to this individual, and absolutely nothing has been done about it when no one listens, the court is powerless.

Stand up please, Mr. Nilaulak. Mr. Rehn, who is the probation worker in Rankin Inlet right now?

MR. REHN: The individual that prepared the report, Your Honour, is Marie Ernerk.

THE COURT: Was she also the probation worker on Justice Marshall's probation order?

MR. REHN: I do not believe just offhand, Your Honour, that she would have been at that time. I cannot be certain of that.

THE COURT: Do you have any indication as to whether or not there is any kind of relationship or rapport of any kind of positive influence that the probation worker is having on your client?

MR. REHN: The only thing I can refer to Your Honour is to the 7th page of her report and my individual contact with that worker. If I might read page 7 of that report -- it's titled Social History Prepared For Forensic Report, the final page. The date it was prepared was the 3rd of April, 1986. If I might read that in:

Rankin has not changed much for Alec, over the past year since returning to Rankin from the Penitentiary. Alec has lived with his mother. Periodically he applies for his own house with Housing but he then withdraws his application. His mother still criticizes him excessively, she blames him for all the things wrong in her life. She kicks him out regularly, he stays elsewhere for a few days then goes home again. Up to November Alec managed to stay away from alcohol after an assault on a juvenile and since he was finishing Mandatory Supervision we moved him at his request to Coral Harbour. He went to join his biological half brother Leo Napayok Jr. who was doing well there after several trips to Yellowknife Correction. Alec was living with a relative of some nature and did well initially, he was returned for court where he pleaded not guilty then he went back to Coral, this trip did not work out so well. We had to return Alec to Rankin two weeks early for court as the town was anxious to have him leave. Over X-mas he befriended a girl from Baker Lake, recently separated from her husband, this girl had a definite influence on Alec, both positive and negative.

Generally Alec's coping abilities have not held up in the past few months, he has maintained his first job for 4 months but has been involved in many antisocial types of behaviour.

The department I think from the report, Your Honour, would indicate that they are not having any appreciable influence.

THE COURT: Well, with respect to the assault, there will be a term of imprisonment of 15 days. With respect to the unlawfully in a dwelling house, there will a term of imprisonment of one month. In addition to that, there will be probation for eight months. Whatever, any influence is a plus, and if the social worker in Rankin Inlet can be of any positive influence, even in assessing the situation in terms of deterioration or otherwise, then I think it would be appropriate. He is subject to the probation order for eight months following his release; he is to report to the probation worker as often as required.

With respect to the breach of probation, there will be 15 days imprisonment. All of these times will be concurrent.

I would ask that a copy of counsels' submissions and the reasons of the court be made available; and if counsel wish to forward them to the Minister of Justice or wherever, they will be available for counsels' consideration.

Thank you, Mr. Rehn.

MR. REHN: Thank you, Your Honour.

(AT WHICH TIME THIS MATTER WAS CONCLUDED).