

TC 00273
TC CR 86 029
1-15?

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

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

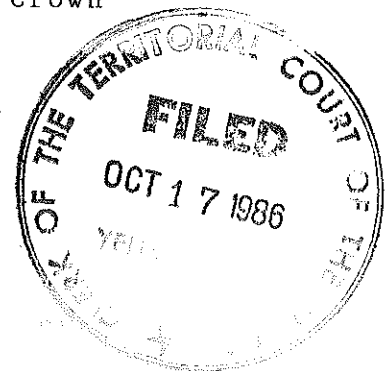
ROBERT ROY FABIAN

Transcript of the Sentencing Hearing held before His Honour, Judge
T. B. Davis sitting at Yellowknife in the Northwest Territories
on Wednesday, October 8th, A.D., 1986.

APPEARANCES:

MS. L. ERICKSON: Counsel for the Defence

MS. N. BOILLAT: Counsel for the Crown



1 to ask Mr. Beck to tell me what he feels about me making an
2 order for the accused to stay away from his home on a probation?

3 MS. BOILLAT: Certainly, sir, I have no objection to the
4 Court asking.

5 THE COURT: Mr. Beck, you are present and were called to
6 the Court with the possibility that you had to give evidence at
7 a Preliminary Inquiry. Since Mr. Fabian has pleaded guilty to
8 this incident, pointing a firearm, would it be satisfactory to
9 you if I were to direct Mr. Fabian not to go to your residence
10 at all, stay away from your home?

11 MR. BECK: Yes.

12 THE COURT: Anything else that you would suggest at this
13 time?

14 MR. BECK: I don't think he needs to go to jail, as long as
15 he doesn't come around the house he won't bother us. No, nor
16 if he doesn't come around the house. When he's sober he's no
17 harm. There's nothing wrong with him, it's just drinking, that's
18 all.

19 THE COURT: My order would have to be that he refrain from
20 or from being at your residence at all rather than just when
21 he's not drinking.

22 MR. BECK: Yes, that's it.

23 THE COURT: Mr. Fabian has stayed away as directed, from
24 you for a period of time. He seems to be agreeable to obey that
25 order because he has already done so.

26 MR. BECK: Yeah.

27 THE COURT: Thank you. Robert Roy Fabian a 35 year old

1 resident of Yellowknife in the Northwest Territories admits
2 that he pointed a firearm at Grant Beck who was in his residence
3 where the accused also lived on the 13th of August, 1986. The
4 accused was in a high state of intoxication at the time and the
5 victim was very concerned for his safety because he knew that
6 Mr. Fabian often becomes violent when he is drinking. Mr. Fabian
7 has been out of serious trouble of a similar nature since the
8 month of November, 1984 when he was put in jail for four months
9 on an assault with a weapon and prior to that had been involved
10 with assault charges in 1972, '74 and '75. He seems, therefore,
11 to be making some efforts at his own rehabilitation as pointed
12 out by Defence Counsel because the number of offences on a yearly
13 basis has decreased substantially in the last few years and he
14 has not been before the Court for over a year at this time.

15 Mr. Fabian appears to have a serious alcohol problem and
16 has been making efforts of his own rehabilitation by taking
17 employment that would cause him not to be regularly in the City
18 of Yellowknife because he spends a part of his time at his em-
19 ployment either out on a boat for fishing purposes or at a fish
20 came some distance from Yellowknife.

21 He has lost a home by getting involved with this offence
22 and scaring the Beck's with whom he lived and has suffered there-
23 fore substantially as pointed out by Counsel in that regard.
24 He has been in remand as a result of the offence for 10 days
25 for which he must be given credit of a number of days in excess
26 of that when considering remand is classified as hard time.

27 He does earn around \$800 a month at his employment and can

1 pay a fine rather than go to jail for a substantial period of
2 time because he has been making some efforts at his own rehab-
3 ilitaion and because there was no injury done, even though the
4 accused had a rifle and ammunition at the time he was unable
5 to load the rifle and therefore at no time was the rifle in fact
6 armed.

7 Mr. Beck seems to be aware of the fact that the accused
8 didn't have much control on what he was doing or know too much
9 about what he was doing even though the accused had in his
10 drunken state indicated that he would be shooting everybody.
11 Mr. Beck has indicated to the Court at this sentencing hearing
12 this afternoon that he himself does not particularly want the
13 accused to go to jail but he does want him to stay away from
14 his home.

15 The accused has followed the direction in the undertaking
16 to stay away from the home of Mr. Beck and have no communication
17 with him or with his wife and I feel it appropriate at this time
18 to place the accused on probation for that purpose, to ensure
19 that Mr. Fabian doesn't go to the premises of the Becks in the
20 future, at least during the period of the probation order.

21 Taking all these factors into consideration and realizing
22 that the accused has already spent time in jail on the offence
23 and has since been back at work and making efforts at his own
24 rehabilitation, I'm going to instead of placing the accused in
25 jail for another period of time, impose instead a fine in the
26 amount of \$650 or in default of that, two months in jail.

27 In addition to that, I'm going to order that the accused

1 not have in his possession while in the City of Yellowknife any
2 firearms, ammunition or explosive substance for a period of
3 four years. I'm also going to require that the accused be
4 placed on probation for a period of two years and one of the
5 terms will be that he will--to have him stay away from the prem-
6 ises of Mr. and Mrs. Beck. The undertaking had him abstain
7 absolutely from any communication with Mr. Grant Beck and his
8 wife. I'm just wondering what would be the most suitable way
9 of ensuring that he doesn't go to those premises. Is there
10 any wording that Counsel might suggest at this time?

11 MS. ERICKSON: Sir, could it not just simply read that he
12 be prohibited at attending at the residence of Mr. Grant Beck?

13 THE COURT: Mr. Beck, would that seem to be appropriate
14 that we will restrict him from attending at your residence for
15 a two year period?

16 MR. BECK: Yep, yep.

17 THE COURT: All right, thank you. Then the accused will
18 be prohibited from--

19 MR. BECK: For two years?

20 THE COURT: Yes.

21 MR. BECK: That's fine.

22 THE COURT: --attending at the residence of Mr. and Mrs.
23 Grant Beck of Yellowknife.

24 MS. ERICKSON: Sir, perhaps it should say Mr. and Mrs. Grant
25 Beck Sr. I understand there is another couple with the same
26 name.

27 THE COURT: Yes, that's the intention, Mr. and Mrs. Grant

1 Beck Sr. of Yellowknife. The accused can pay that fine in what
2 period of time?

3 MS. ERICKSON: Four months, sir.

4 THE COURT: Pay at least \$200 during each of those months?

5 THE ACCUSED: Yes, sir.

6 THE COURT: All right, I will allow four months to pay the
7 fine. I expect that you will pay at least \$200 every month until
8 of course the last one then it will only be \$50 instead of \$200.
9 Mr. Fabian, you are going to have to stay and sign the probation
10 order and also receive a copy of an order that says you are not
11 to have possession of any firearms, ammunition or explosive
12 substances at any time that you are in the City of Yellowknife.
13 Do you understand that?

14 THE ACCUSED: Out in the bush camp?

15 THE COURT: You are entitled when you are not in the City
16 to have firearms.

17 MS. BOILLAT: Your Honour, with all due respect, I have some
18 difficulty with the prohibition order. I understand, sir, it
19 has to be--it's discretionary as to whether it's imposed or not
20 but it can't be a conditional prohibition order. It's either
21 absolute or not.

22 THE COURT: Madame Clerk, pass me the Code. Is there a
23 case that restricts or just--

24 MS. BOILLAT: Sir, it's the reading of the section I would
25 suggest, sir, that--

26 THE COURT: What section?

27 MS. BOILLAT: 98 paragraph 2, sir, I would suggest that if

1 the Court--let me rephrase it, sir. In the past there have been
2 other occasions when we have the Court place the accused on
3 probation and that is one of the terms of the probation order.

4 THE COURT: That might be a more appropriate system then
5 of controlling it. If we do have some inability to deal with
6 the matter under the section 98, then today I will cancel the
7 order under Section 98 that I was intending to impose and in-
8 stead there be added to the probation order that the accused
9 will be prohibited from possession of any firearms or ammunition
10 or explosive substance while in the City of Yellowknife.

11 MS. ERICKSON: Sir, I take it then in that case it's changed
12 to a period of two years.

13 THE COURT: Only during the time that he's on probation.
14 I might want to be able to extend it but I don't think I can.

15 MS. ERICKSON: It doesn't seem that it could be for a pro-
16 bation order.

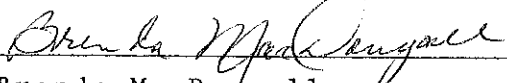
17 MS. BOILLAT: I would ask for an order for the return of
18 the exhibit to the lawful owner.

19 THE COURT: Thank you. The order will be granted that
20 the exhibit can be returned to the proper owner.

21 MS. ERICKSON: Thank you, sir.

22 (AT WHICH TIME THIS SENTENCING HEARING WAS CONCLUDED)

23 Certified a correct transcript,

24 
25 Brenda MacDougall
26 Court Reporter
27