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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

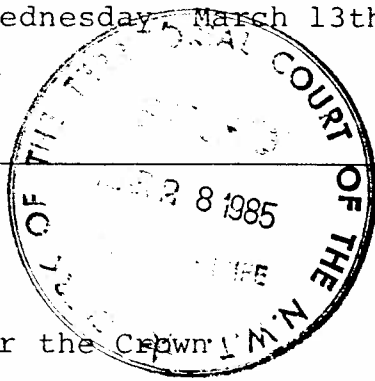
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ISAAC KAOTLOK

Transcript of the oral sentencing delivered by His Honour Judge T.B. Davis, sitting at Cambridge Bay, in the Northwest Territories, Wednesday March 13th, A.D. 1985.



APPEARANCES:

MR. M. ZIGAYER Counsel for the Crown
MR. G. CARTER Counsel for the Defence

1 THE COURT: Mr. Isaac Kaotolok has entered a plea of guilty to
2 a charge that he did on the 15th of December, 1984 at
3 Cambridge Bay wilfully set fire to a building which was a
4 residence that he recently had taken over as an occupant
5 from the Cambridge Bay Housing Association, and therefore
6 violated Section 389(1) of the Criminal Code.

7 The accused and his wife were having a housewarming
8 party because they had just recently moved into the residence
9 which was burned and which was a part of row housing, being
10 the end unit of a number of joined houses, when an argument
11 developed between the accused and his wife because she
12 wished to continue partying. The guests left and shortly
13 thereafter the wife and his six year old son also left, and
14 it caused the accused to become upset. After having had some
15 more beer he then found a five gallon can of gasoline which
16 he took to his residence and poured approximately one-eighth
17 of the gas on the carpet and in the residence itself, having
18 then moved the balance of the five gallon container to another
19 part of the room under a table, but did not put the cap on the
20 remaining gasoline in the container. He then lit a cigarette
21 and threw the cigarette on the carpet which was doused with
22 gasoline when he was moving towards the bedroom, or was in
23 the bedroom door. An immediate flash fire caused some injury
24 to the accused by burning his hands and his face and having
25 his hair singed. Because he could not get out of the apartment
26 through the room that was on fire, he escaped through a
27 bedroom window and notified some neighbours of the fire.

1 As a result of that call the Fire Department extinguished
2 the fire after it had caused approximately Seventeen to
3 Twenty thousand dollars of damage.

4 The accused shortly thereafter admitted his activity
5 in a warned statement to the Police. I also note from the
6 facts that there were other people in the adjacent row housing
7 units, and two units from the location of the accused there
8 were some people who were passed out from intoxication. I
9 therefore note that not only serious injury might have occurred
10 to the accused but to other persons in the remaining part of
11 the adjoined buildings.

12 The accused appears before the Court with a very
13 short criminal record and a record in 1978 for common assault
14 and in 1981 for careless use of firearms. They are not in any
15 way related to the case before the Court today, and I am
16 going to give that record minor consideration at this time.
17 I also note that I have had the opportunity of reading over
18 the pre-sentence report which indicates that the accused is
19 twenty-seven years of age and is married and has now become
20 separated from his wife, although he has the custody of his
21 child who is presently living with the accused and some friends
22 in this area. He has been very depressed and remorseful
23 since the offence and has realized the seriousness of the
24 offence. The accused seems to acknowledge, as well, that
25 his drinking and the drinking of his wife at the party might
26 have contributed to some extent to his attitude on that
27 occasion. He has since the offence stopped drinking, but

1 still is suffering emotionally because of the separation of
2 he and his family. Because of the remorse with realizing
3 the seriousness of the offence before the Court the accused
4 also seems to have indicated that in the past a number of his
5 marital upsets resulted from the use or consumption of alcohol.
6 At the present time the accused is unemployed, and as pointed
7 out by Defence counsel he has lost his job and has lost some
8 of his property and has lost probably his family as a result
9 of what has happened. The pre-disposition report also indicates
10 that the accused because of his state of depression and his
11 emotional upset is a person who needs counselling and might
12 be suitable for supervised probation with counselling in the
13 future. It is obvious that the accused's temper got out of
14 hand when he became annoyed at his wife, and he as a result
15 of that decided to commit some serious act because of the
16 relationship that existed between he and his wife at the
17 time.

18 I think it is proper that Crown counsel has presented
19 to me a number of cases, because it is of a great assistance
20 to the Court to know what similarities the case before the
21 Court has with other cases that have been decided by Courts
22 throughout the country. I especially take note of the case
23 decided by Chief Judge Slaven in Frobisher Bay when he dealt
24 with a twenty-three year old native person who had a spouse
25 and a child and as a result of a domestic dispute set a fire
26 in his house which caused Twenty-five thousand dollars in
27 damage. Chief Judge Slaven in the case of The Queen v.

1 Ishulutak indicated that fires in residences often are such
2 that they can cause possible danger to other residences in
3 the vicinity. Even though the accused person had a very
4 favourable pre-sentence report, he acknowledged the danger to
5 the public and acknowledged, as well, that the accused suffered
6 from emotional stress as a result of his domestic situation,
7 but felt that it was necessary at that time to impose nine
8 months in jail to be followed by two year's probation.

9 It has also been pointed out to me that in the case
10 of The Queen v. Dennis Greely in the British Columbia County
11 Court in 1980 a thirty-four year old tenant who argued with
12 his landlord while he was drinking had set his property on
13 fire and was sentenced to two years less a day plus two year's
14 probation. The Court there acknowledged that there was no
15 monetary gain for insurance purposes, and on that occasion
16 the accused had an unrelated, old criminal record.

17 Another case that has been presented is The Queen
18 v. Pruner (1979), reported from the Ontario Court of Appeal
19 at 9 Criminal Reports (3d) S-8, where Twenty-two thousand
20 dollars worth of damage had been done by a fifty-three year
21 old person with no record. The Court of Appeal reduced the
22 sentence from the maximum of five years at the time to three
23 years in jail.

24 The New Brunswick Court of Appeal in the case of
25 The Queen v. Poitras, December of 1978, dealt with a twenty-
26 seven year old person who had been drinking and who had some
27 offences on his criminal record which were property related

1 offences. Although only Four hundred dollars damage had been
2 done at that time, he was required to serve sixteen months
3 in jail, and the Court made the comment that on any setting
4 fire to buildings the minimum that should be considered by
5 any Court would be six months.

6 I think Crown counsel has been very fair in presenting
7 its position in this regard, and I believe Defence counsel
8 has acknowledged and was reasonable in not arguing about the
9 facts in this situation that it certainly did cause other
10 persons to be in a very serious potential for injury when a
11 house is joined to others and has a flash fire occurring
12 in one part of the residence. It was fortunate that the fire
13 did not spread to other parts of the residence and cause
14 injury to some people and damage to a substantial amount of
15 property. I therefore have to acknowledge and recognize that
16 in this situation there was great potential for injuries to
17 others and for damage to other property.

18 The accused is at the present time unemployed and
19 has lost his employment, so there is no likelihood of any
20 restitution being made. Crown counsel has suggested that the
21 accused should be imprisoned for a term in the range of twelve
22 months. I am inclined to accept that recommendation, because
23 I feel that it is necessary for the Courts to impose penalties
24 and punishment that will protect the public by indicating
25 to others that they must not commit offences of this nature
26 or that they will be incarcerated or penalized for doing so.
27 In that particular way the Courts hope that the sentencing

1 will deter others from allowing their tempers to get out of
2 hand and causing injury or damage as a result of setting fires
3 to properties.

4 I can recognize that the accused has suffered
5 substantially as a result of his actions both emotionally
6 and through the separation of his family. As a result of
7 that I am not going to impose a longer period than is
8 recommended but will give some credit to the accused for the
9 injury that he already has suffered in the burns to himself
10 and the loss of his property. I do feel, however, that
11 Defence counsel was accurate when he said that the accused
12 himself was very lucky because in a flash fire of this nature
13 he was not injured, especially when the can of gasoline was
14 in the same room in which the fire occurred. But the can
15 itself with a major part of five gallons did not itself burn
16 or explode or cause further injury.

17 Because the pre-disposition report has indicated
18 that the accused has suffered emotionally from this matter,
19 I am also going to make a recommendation that the accused
20 when he is incarcerated obtain access to counselling services
21 so that he will be able to reconcile his position with his
22 actions and after he has served his time will have then
23 satisfied the penalty imposed by society and be able to
24 rehabilitate himself following his release from jail.

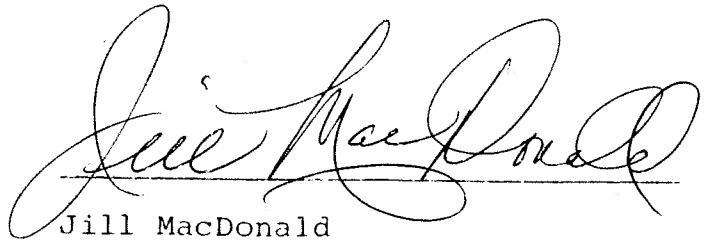
25 I am going to require that he also be placed on
26 probation for a period of time so that counselling services
27 as necessary will still be made available to the accused so

1 long as he is on the probation order. I am going to require
2 that he participate in counselling services for his own
3 benefit. I feel that the Chief Judge of the Territorial
4 Court probably had selected a term of imprisonment that
5 would satisfy the requirement of this Court today, and I am
6 going to impose the same length of time as the Chief Judge
7 has imposed for similar circumstances in Frobisher Bay.
8 Therefore, I am going to sentence the accused to serve nine
9 months in jail followed by two years probation. In the
10 recommendation for his committal to jail I am going to recommend
11 that he receive counselling treatment as recommended by the
12 Social Services Department and the probation report. I am
13 going to require that he report to the probation officer within
14 two weeks of his release from jail and thereafter as directed.
15 I am also going to require that the accused participate in
16 any counselling and curative treatment programs recommended
17 by the probation officer.

18 Mr. Kaotolok, do you understand all that I have
19 said here today? Are you agreeable to the terms of the
20 probation order in participating in the counselling as
21 recommended?

22 All right. The Clerk will be preparing the proba-
23 tion order, and you will be required to sign that. I want
24 you to know that I feel this is the minimum that the Court
25 could consider for this type of offence, because I am sure
26 from the pre-sentence report that you are familiar with how
27 serious this matter must have been considered by the Court.

Certified a correct transcript,

A handwritten signature in cursive script, reading "Jill MacDonald". The signature is written in black ink and is positioned above a horizontal line.

Jill MacDonald
Court Reporter

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