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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

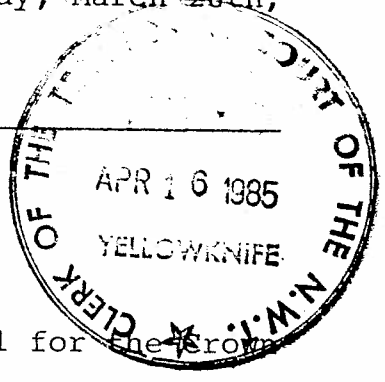
RONALD JOSEPH PAYNE

Transcript of the Oral Sentencing Delivered by His Honour Judge T. B. Davis, sitting at Yellowknife in the Northwest Territories, on Thursday, March 28th, A.D., 1985.

APPEARANCES:

MR. N. SHARKEY: Counsel for the Crown

MS. L. ERICKSON: Counsel for the Defence



1 THE COURT:

2 Mr. Ronald Joseph Payne appears before
3 the court as a twenty-two year old resident of Yellowknife,
4 and admits that on October the 27th of 1983, while he was
5 in Hay River, he and another person who had been drinking
6 for some number of hours before the offence occurred
7 broke and entered the Red Rooster Convenient Store at Hay
8 River with intent to commit an offence. He therefore
9 violated Section 306(1) of the Criminal Code when they
10 entered that building through a rear air vent.

11 The co-accused was a young man who had no previous
12 criminal record and was at least two years younger in age
13 than the accused, and he received a suspended sentence
14 for the similar offence.

15 Mr. Payne comes before the court in completely
16 different circumstances because even though his co-accused
17 had been the instigator or the person who suggested that
18 the offence should occur, Mr. Payne has a substantial
19 record which includes a number of periods of times in jail
20 between 1979 and 1983.

21 Break and enter, of course, is still a very serious
22 matter and has a maximum jail term available of fourteen
23 years. I think Mr. Payne is in a rather special set of
24 circumstances which makes it very difficult for the court
25 to know what would be an appropriate sentence today because
26 he is today being dealt with on a charge that occurred
27 in 1983. There is no doubt in my mind that if I were to
have dealt with it in 1983 I would have had to consider a

1 very long period of time in jail, because it was not a long
2 delay between other offences which were dealt with in
3 March of 1983 and the offence before the court.

4 Those are not the circumstances in which he appears
5 before me today after having stayed out of trouble and not
6 had any convictions registered against him for now over a
7 year and a half or possibly more, because the last conviction
8 was in March of 1983, and he has proven that his change in
9 circumstances has caused him to have become more concerned
10 about his own rehabilitation. It appears that his
11 association with his common-law wife and the birth of a
12 child, who is nine months of age must have caused Mr.
13 Payne to mature substantially because he is showing
14 concern for his family and seems to have improved in his
15 own self-worth and therefore has accomplished what the
16 courts often are hoping for when sentences are imposed
17 to deter people from committing offences and as well to
18 hope that their rehabilitation is of some benefit to
19 society.

20 The Tree of Peace and the Broomball Association,
21 both organizations in Yellowknife, have indicated that
22 Ronald Payne has been involved with sports and with
23 taking counselling over the past two years, and he seems
24 to have matured into a fine young man who is involved and
25 willing to participate in worthwhile projects.

26 I also can take into account the fact that while
27 a person is waiting for a charge to be dealt with by a

1 court it is emotionally a strain because one never knows
2 what to expect and that also must have been a burden
3 carried by the accused since October of 1983. Therefore,
4 I think it is appropriate that the court can consider
5 some benefit to the accused for the delay that has occurred
6 especially since the delay has caused him to have
7 reconsidered his whole way of life and has possibly
8 assisted in his own acceptance of responsibility for both
9 himself and his family and what appears to have been
10 straightening out of his life.

11 I think the expression by Defence counsel, Miss
12 Erickson, that the record does not accurately reflect the
13 present character of the accused is one that I should
14 take special note of because even though the accused has
15 a record, it doesn't appear to show the present circumstances
16 of the accused and therefore, I believe that I must put
17 less emphasis on the fact that the accused had been in
18 trouble before since there does appear to have been a
19 substantial change in his attitude and his way of life.

20 Therefore, I now come to the point of trying to
21 determine what would be an appropriate sentence taking
22 all those matters into account for the benefit of the
23 accused, and although I agree with Crown that the matter
24 is a serious matter and ordinarily is one that would
25 require a substantial period of time in jail, considering
26 the fact that the accused has a record, I feel those
27 special circumstances that he is in does qualify him for

1 much, much less then in the form of a penalty than might
2 otherwise be considered to the extent that I am prepared
3 to impose less than three months in jail so that the
4 accused could serve his time intermittently at a
5 convenience to himself and therefore allow him to still
6 maintain his family and maintain his employment if
7 suitable times can be worked out.

8 I do want Mr. Payne to know, however, that he is
9 getting this special consideration and what I feel to be
10 special consideration because he himself seems to have
11 made the change in his own life and he is deserving of some
12 concern and consideration by the court on that basis.

13 Miss Erickson, what do you think as to intermittent
14 times serving Friday evening until Monday morning?

15 MS. ERICKSON: That would be fine, sir.

16 THE COURT: Alright, I am prepared then to impose
17 a jail term on the accused in the amount of, I suppose
18 it would be convenient to put it about eighty days. That
19 is going to be less for sure than the term required in the
20 Criminal Code as a maximum of niney. Eighty days in jail
21 to be served intermittently. So that the accused will
22 be required to report to the Correctional Centre in
23 Yellowknife on Friday evenings at 7 p.m., and remain until
24 7 a.m. on Monday mornings until such time as his sentence
25 is served. He will be required to attend then commencing
26 on March the 29th, 1985. Mr. Payne, you understand that
27 you have to attend each weekend and you have to be in a

1 proper state, completely sober, to serve the time. I don't
2 feel that it is necessary for me to at this time place the
3 accused on probation because I think he is making
4 substantial efforts at his own rehabilitation and that
5 it would be unnecessary for the court to--

6 MR. SHARKEY: Sir, there is a probation requirement
7 with that period of incarceration.

8 THE COURT: Yes. The accused will be on probation
9 for the period that is required for his attendance at jail,
10 but there will be no special reporting conditions other
11 than his attendance to serve his term. Mr. Payne, you
12 will be required to stay in the building until such time
13 as the clerk has the probation order available for your
14 signature and you know that while you are on probation
15 during that time it is a criminal offence to disobey any
16 terms of the order. You must keep the peace and be of
17 good behavior and report to the court as required, and also
18 obey the special terms and that is reporting for incarceration
19 on weekends. Do you understand that?

20 MS. ERICKSON: Yes, thank you, sir.

21 THE CLERK: Your Honour, what happened to the Section
22 306 (1) (b) charge?

23 THE COURT: Mr. Prosecutor, I understand that for
24 lack of prosecution on the second charge that you wish to
25 have that matter dismissed?

26 MR. SHARKEY: Yes, one thing at a time. With respect
27 to the 306 charge, there is no evidence.

1 THE COURT: Alright, thank you.

2 -----RECESS FOLLOWS.

3 (UPON RESUMING AFTER A BRIEF ADJOURNMENT.)

4 THE CLERK: Ronald Joseph Payne.

5 MR. SHARKEY: Thank you, sir. This matter is brought
6 on before you. You will note that the sentence you imposed
7 just shortly before we opened court just now was a
8 sentence that the accused commence his sentence on Friday,
9 March the 29th. I believe it is my friend's application
10 to have that changed to commence on April the 19th. From
11 the Crown's point of view we don't have any objection to
12 that, nor do I take issue if the court is functus at this
13 point. The warrant of committal is not issued at this
14 point.

15 MS. ERICKSON: Sir, I'm sorry. I omitted to say before
16 as was in the letter from the Broomball Association, they
17 are having the National Championships during the time
18 of April the 9th to the 15th which cuts into one of the
19 weekends that Mr. Payne was to have been serving. They
20 still would like it if he could go to those championships
21 and after discussing it with my friend it would appear
22 that the easiest way to change the order would be simply to
23 have the sentence start April 19th when he would be back.

24 THE COURT: I have no difficulty in allowing that. I
25 think the Crown is being reasonable with not having any
26 objection to the time of the commencement of the serving of
27 the sentence at this time, and we can amend the time to

commence serving--

1
2 MR. SHARKEY: No, technically, sir, what that involves
3 is simply your endorsement on the warrant of committal
4 and endorsement on the back of the information prior to
5 final endorsement that you vary the time of the commencement
6 of the sentence. That is the first thing it involves.
7 Secondly, technically it is an application to vary the
8 probation order and simply change the time on the probation
9 order. Again, we consent to that variation. We suspect
10 that in any event the jail would somehow through their
11 temporary absence system make it so that he could go.

12 THE COURT: That is what I was relying on previously,
13 and the Crown had suggested that that would be the proper
14 way to deal with it.

15 MR. SHARKEY: I don't see that there is any sense for
16 us to object to it.

17 THE COURT: We will put on the probation order, Madam
18 Clerk, we will put that the probation order, that the
19 accused will commence serving his sentence on April the
20 19th, 1985, at 7 o'clock.

21 THE CLERK: The probation order is attached to the
22 information, Your Honour. I assume the warrant for committal
23 is attached also.

24 THE COURT: The probation order and the warrant then
25 will be prepared in the form that shows it as commencing
26 Friday, and I will amend the March 29th date to April 19th,
27 1985. I will initial this and I may have Mr. Payne also

1 initial it here.

2 MR. SHARKEY: You have an original warrant of committal
3 Esir which has been given out to the court officer. That
4 is the one that should be initialled.

5 THE COURT: Yes, I was initialling the probation
6 order. Do you wish to have that one destroyed and replaced,
7 or do you wish to have it amended?

8 MR. SHARKEY: Since it is not finalized, yes. If it has
9 been finalized and signed, we will just amend it.

10 THE COURT: Alright, I will make the amendment.

11 MR. SHARKEY: Perhaps, as well, it might be a matter of
12 convenience. Let me consult with the police officer and
13 see what is easier with her. As long as it is clear, sir,
14 on the amended copy. I don't think, sir, we are dealing
15 with anything of substance here. As long as the jail
16 understands clearly when he is supposed to start his time.

17 THE COURT: Maybe you could just check that amended
18 form then, Mr. Sharkey, and see if it is suitable, and if
19 not, we can have a new one typed up if you prefer it.
20 Madam Clerk, will you have the accused initial that.

21 MR. SHARKEY: That is good enough, sir.

22 THE COURT: If the copies of the probation order have
23 not been distributed, we can amend all the copies as well.
24 Mr. Paybe probably already has his copy, and it should be
25 amended. Madam Clerk, I can initial his as well if he
26 would like.

27 MR. SHARKEY: I think that that does complete matters

1 then with Mr. Payne.

2 THE COURT: Thank you.

3 MS. ERICKSON: Thank you, sir.

4 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

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6
7 Certified a correct transcript,

8
9 Laurie Ann Young
10 Laurie Ann Young
11 Court Reporter
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