

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

VS

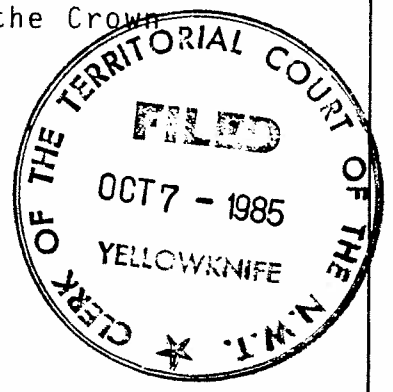
ARTHUR LAWRENCE MCDERMOTT

Transcript of the Oral Decision delivered by His Honour, Judge  
T. B. Davis, sitting at Yellowknife in the Northwest Territories,  
on Thursday, July 4th, A.D., 1985.

APPEARANCES:

MR. A. WRIGHT: Counsel for the Defence

MR. M. ZIGAYER: Counsel for the Crown



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

THE COURT: Mr. Arthur Lawrence McDermott has acknowledged that notice of intention to ask for a higher penalty as a result of previous convictions for similar offences was served upon him and I have received the notice as an Exhibit-A in the proceedings before the Court today. The accused also acknowledges the existence of the criminal record in which he has been convicted of offences under Section 236 of the code and 234 of the code on a number of occasions in the past, appearing today with more than four similar offences within the last five years. I say similar in that they are related to operations of a motor vehicle while violating the sections of the code relating to consumption of alcohol and driving at the same time.

Originally the accused had been convicted a number of times and fined on the first two offences before 1976 but in 1976 spent 30 days in jail, intermittently for a charge under Section 236 of the code. Subsequently, in 1981, the accused was fined \$650 and also required to serve two weeks intermittently on a second charge when he appeared before the Court in November 1981.

In 1982, the accused spent six months in jail and had his license prohibited for an 18 month period for a charge under Section 236 of the code and in 1984, the accused was fined \$1,500 on a similar offence.

I review that section of his record because that has been referred to me by Counsel today and I'm not taking into account any of the other offences under the record because it seems that it's probably before the Court as a result of alcohol and

- 3 -

1 these were/ <sup>in</sup> recent years the more serious offences on the record  
2 of the accused.

3 I, therefore, have to try and determine what would be an  
4 appropriate penalty to protect the public, which is the major  
5 objective of sentencing and to deter both the accused and others  
6 from repeating offences of this nature. I must acknowledge that  
7 I also have to take into account the possible rehabilitation  
8 of the accused and his personal circumstances. Many of the  
9 decisions on this type of offence have resulted in penalties  
10 of jail terms being imposed because the code requires that  
11 for the third offence, if Crown or police serve notice  
12 of intention to ask for a jail term, the Court must impose at  
13 least a three month penalty. Since the accused has had that  
14 experience in the past and has been in jail for similar offences,  
15 I feel that I have no alternative but to impose something sub-  
16 stantially more than a minimum of three months because this  
17 is not the third offence but subsequent or in addition to that  
18 amount substantially since the accused has appeared before the  
19 Court so often in the past.

20 Defence Counsel has suggested that because it's the first  
21 failure to provide a breath sample that I should think of the  
22 conviction differently today than other convictions under Section  
23 236 and 234 of the code. I must say that for the purposes of  
24 the record today, so that there will be no doubt as to what  
25 I'm thinking, that I'm imposing or intend to impose a penalty  
26 that probably would have been imposed had I found the accused  
27 guilty of impaired driving under Section 234 or of violating

1 the breathalyzer readings under Section 235 of the Code because  
2 my understanding and belief is that the law was put into effect  
3 so that all of those offences would be dealt with equally by  
4 the Court in imposing sentences even though one is somewhat  
5 technical compared to others. The penalty to be imposed, as  
6 far as I'm concerned, was intended that they be similar.

7 I say that specifically because of the very capable sub-  
8 missions made by Defence Counsel and I want to be in a position  
9 to know that I have not accepted that in cases there is a possi-  
10 bility of an appeal that might correct my thinking in that line,  
11 if I'm not thinking according to the current law.

12 The accused will be out of work for a period of time when  
13 he is in prison. I must take into account the fact that he  
14 has children and he and his wife both work to support the family. I  
15 do not want the term of imprisonment to be such a burden that  
16 both he and his family suffer substantially because all I'm  
17 looking for in imposing sentence is the effect required to  
18 deter the accused from committing the offences. It's obvious  
19 that penalties in the past have not worked even though he has  
20 through Counsel indicated that he has not been drinking since  
21 November of '84 which now is half a year at least, I still  
22 feel that a relatively substantial period of incarceration  
23 must be imposed to make sure that the accused knows the serious-  
24 ness of this offence.

25 I'm also going to cancel the driving privileges of the  
26 accused absolutely because I feel the public will be far better  
27 off if the accused is not driving a vehicle for a period of

1 time. Because he works in the automotive field I feel five  
2 years would be inappropriate and only cancel the driving priv-  
3 ileges for a period of three years. If he were not in that  
4 field, I would have given a five years suspension of his driving  
5 privileges.

6 I'm going to impose what I consider to be the minimum period  
7 of time in jail that would be appropriate at this time and a  
8 good portion of the reason that he's getting this benefit is  
9 the fact that he has not been drinking for six months. I  
10 think he has recognized his problem and I want to encourage  
11 him to continue on that approach because he and his family  
12 and the public generally will be certainly protected if he's  
13 not driving while there is alcohol in his body.

14 I'm going to impose a term of jail of eight months for  
15 the offence under Section 235 of the code and that's count  
16 number 2 on information 687.

17 MR. ZIGAYER: Sir, is that to be consecutive to any other term  
18 he's serving?

19 THE COURT: Yes. I don't see anything else but I will in-  
20 dicate that it is consecutive to anything else.

21 MR. ZIGAYER: I understand that a fine that was imposed was  
22 not paid and he would be serving that now.

23 THE COURT: Thank you. Mr. Wright, you understand that  
24 I'm going to make it consecutive because I do expect that has  
25 to be additional penalty?

26 MR. WRIGHT: Yes, sir.

27 THE COURT: Consecutive to any time being served. Mr. McDermott,

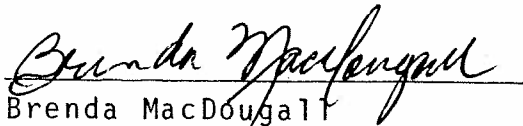
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

you understood everything today?

THE ACCUSED: (Nods, yes).

(AT WHICH TIME THIS PROCEEDING WAS CONCLUDED)

Certified a correct transcript,

  
Brenda MacDougall  
Court Reporter