

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:

HER MAJESTY THE QUEEN

VS

JOHN DAVID VERMILLION



-----

Transcript of Proceedings of an Oral Judgment given  
by His Honour Judge R. W. HALIFAX, sitting at Fort  
Smith in the Northwest Territories on Monday, February  
18, A.D. 1985.

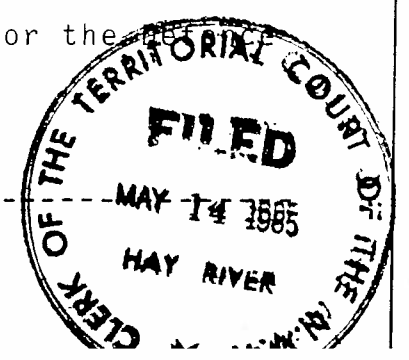
-----

APPEARANCES:

MS. N. BOILLAT Counsel for the Crown

MR. L. SEBERT Counsel for the

-----



1 THE COURT:

Stand up, Mr. Vermillion.

2 As you recall, Mr. Vermillion, this  
3 matter was adjourned over for sentencing from the last  
4 sitting. I wanted to take some time to think about it  
5 considering your previous criminal record, which is  
6 substantial. You have 36 previous convictions since  
7 1977.

8 The contents of the Presentence Report  
9 with regard to possible programs which may be of benefit  
10 to you in the future. As well, Mr. Vermillion, there are  
11 continual offenses of violence which cause me grave concern.  
12 I appreciate there are some frustrations on your behalf,  
13 but they continually manifest themselves in the form of  
14 violence. I look at your criminal record and your previous  
15 convictions: There are assault causing bodily harm  
16 convictions; there is a previous robbery conviction; in  
17 fact, your first conviction in 1977 was for assault causing  
18 bodily harm; 1980, assault causing bodily harm; 1981,  
19 assault causing bodily harm, possession of a prohibited  
20 weapon, robbery. At some point, Mr. Vermillion, it has  
21 to stop. The community is entitled to some protection  
22 from violent behavior. As well, there are continued  
23 property offenses of which at least half of your record  
24 is made up of break and enters and thefts and take autos.

25 Now, I have taken some time to consider  
26 what I think is a fit and proper sentence. I also take  
27 into consideration it is to your benefit, Mr. Vermillion,

1 that you have been in custody since last November. I  
2 have basically treated the time you have spent in remand  
3 as what I normally would give in a sentence, and I have  
4 taken it off. In other words, you have spent about three  
5 months in custody, and I have reduced your sentence, what I  
6 think is a proper sentence totally considering the  
7 offenses, by six months. So, in effect, you have double  
8 credit for the time you have been in remand. Do you  
9 understand that?

10 MR. VERMILLION: Yeah.

11 THE COURT: Mr. Vermillion, it is sad to say that it seems that the  
12 situation is such that the only way I can see to help  
13 you as far as rehabilitation is concerned is I have to  
14 give you a sentence of over two years so the resources  
15 and the facility is available and can be of assistance  
16 to you. It is a sad comment, but that seems to be the  
17 situation. Now, regardless of the need for that treatment,  
18 which is a consideration, it seems to me over and above  
19 that or even if it was not necessary, considering the  
20 number of offenses and the type of offenses before me,  
21 the total penalty must be one that is over two years,  
22 regardless. Now, I look at it very simply. You have  
23 got another conviction for robbery. You already have a  
24 previous conviction for robbery, and that in itself alone  
25 should bring a penitentiary term.

26 Taking all those matters into consid-  
27 eration, I am considering as well what the total sentence

1 will result to. It seems to me, Mr. Vermillion, you are  
2 entitled to the Court taking into consideration the total-  
3 ity when you have this number of charges; and as I have  
4 said, I have taken into consideration the time you have  
5 already spent in custody. As well, I appreciate there is  
6 damage involved which normally would be a matter for  
7 restitution; but in the circumstances of this accused, I  
8 do not think it is realistic to consider ordering resti-  
9 tution over and above the sentence that will be imposed.

10 Now, with regard to the charge of  
11 Section 294(b)--that is the charge that was originally  
12 robbery and a plea of guilty to a theft under charge on the  
13 2nd of November--considering your previous criminal record,  
14 Mr. Vermillion, I sentence you to three-months imprison-  
15 ment. With regard to the take auto involved the same day,  
16 the 2nd of November, involving the snowmobile of Mr.  
17 Kaeser, I sentence you to three-months imprisonment to be  
18 served concurrently.

19 Do you understand that?

20 The 9th of November matter: taking the  
21 ski-doo of Joseph Larose. Again, a week later; and you  
22 were aware, Mr. Vermillion, that your previous criminal  
23 record, as I had said, has got about 15 property offenses  
24 prior to these. On that charge, I sentence you to three-  
25 months imprisonment to be served consecutively.

26 We now go to the 14th of November.  
27 There is an assault on Mr. Nadary and willful damage to

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

Mr. Nadary's stereo and theft of a bottle of Silk Tassle. These all occurred on the same day. With regard to the 245 charge, the assault, and considering your previous criminal record--I note that the Crown has elected to proceed summarily--I sentence you to six-months imprisonment to be served consecutively on Count number one. Count number two, the 387 charge: I sentence you to two months, to be served concurrently with Count one. With regard to the theft under of the same day, I sentence you to two-months imprisonment to be served concurrently to the assault, Count 1.

We now come to the matter of the 20th of November. On that day, there is an assault on Rosalie Nadary and the theft of two bottles of Molson Canadian from Thomas Nadary. With regard to count 1, again, it is another assault, Mr. Vermillion, the last one just being on the 14th of November; so within a week, it is another assault. Again, the Crown has elected to proceed summarily. Considering your previous criminal record and the number of assaults and how close they are getting together, mainly involving alcohol and alcohol abuse, I sentence you to six-months imprisonment to be served consecutively. With regard to Count number three, the theft under, I sentence you to two-months imprisonment to be served concurrently.

We now come to the matters of the 23rd of November. Now, this is the one that has caused me

1 some concern, Mr. Vermillion; and I wanted to consider  
2 it because it is your second conviction for robbery. In  
3 my view, a second conviction for robbery at this stage in  
4 your career is one that should bring a substantial jail  
5 term. The last conviction, Mr. Vermillion, was in 1981,  
6 some three years before; and I noticed you were released  
7 last spring on mandatory supervision. Nobody has made me  
8 aware of whether your mandatory supervision has been sus-  
9 pended or revoked or what has happened. I have no idea.  
10 As I have said, this is the one that causes me concern.  
11 It is a second conviction, Mr. Vermillion. It is an  
12 offense that is treated very seriously in our criminal  
13 justice system when there is, in effect, a theft that  
14 involved violence. The amount of money involved in this  
15 case is \$19, which is not a major amount; but there was  
16 violence used. Although the violence was not substantial,  
17 it is still enough. Under the circumstances, with regard  
18 to the offense under Section 303 of the Criminal Code,  
19 Count number one, I sentence you to two-years imprisonment  
20 to be served consecutively.

21 With regard to the offense of the 246  
22 (2)(a) of the Criminal Code, the assault on Constable  
23 Robert Knopp: Now, this occurred the same day and not  
24 too long after the robbery charge when the Police Officers  
25 approached to arrest you, Mr. Vermillion; and you hit the  
26 Police Officer over the head with a bottle causing injury  
27 to the Police Officer: stitches. Again, you were under

1 the influence; but this is just not acceptable behavior.  
2 A Police Officer who is enforcing the law and attempting  
3 to keep the peace in the community should have some pro-  
4 tection as well from the Courts. Although it occurred  
5 the same day, and I have considered it, it seems to me it  
6 is a matter for consecutive sentencing considering your  
7 previous criminal record. On that charge, I sentence you  
8 to four-months imprisonment to be served consecutively.

9 With regard to the charge under Section  
10 388(1), willful damage of a light fixture in the Police  
11 Detachment, I sentence you to two-months imprisonment to  
12 be served concurrently to the 246 charge.

13 Now, that leaves me a charge under  
14 Section 118(a): resisting Constable Flewelling in the  
15 execution of his duty, which there has been no plea.

16 MS. BOILLAT: That is to be withdrawn, sir.

17 THE COURT: Very well. I also have, as well, a charge under Section  
18 307.

19 MS. BOILLAT: To be withdrawn, also.

20 THE COURT: And the 133 that is on the--oh, there is a Stay of  
21 Proceedings.

22 MS. BOILLAT: Proceedings were stayed in regards to that, sir.

23 THE COURT: Sorry.

24 MS. BOILLAT: There is also November 23: a 245.1 and a Section 118,  
25 also.

26 THE COURT: I only have the 118 charge. There is a charge--on the  
27 robbery Information, there is a charge of 245.1.

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

MS. BOILLAT: Yes, sir.

THE COURT: Is that the one you wish withdrawn?

MS. BOILLAT: Yes, the 245.1 dated the 23rd of November, Information, the 24th of November.

THE COURT: Yes.

MS. BOILLAT: Yes, sir.

THE COURT: Same count as the robbery.

MS. BOILLAT: Be withdrawn as well as the Section 118 of November the 23rd relating to Constable Flewelling, sir.

THE COURT: Okay. So that is to be ordered withdrawn.

Now, Mr. Vermillion, it comes out to a total of 46 months, Mr. Vermillion, as I calculate it. Hopefully, Mr. Vermillion, there can be the resources made available to give you some assistance; but I can tell you, Mr. Vermillion, right now, you get released from custody this time and if you get involved in this kind of thing again, you could well be looking at a situation where the Crown will apply to have you declared a habitual criminal, in other words, a dangerous offender whereby you can be locked up for the rest of your life. I can appreciate, as the Presentence Report indicates, you have had some problems; and life has not been easy, Mr. Vermillion; but at some point, you have got to take responsibilities; and you cannot be hiding behind it. There is no excuse whatsoever for the continued offenses and, particularly, the offenses of violence that you have been committing.

Now, I hope you take advantage of the

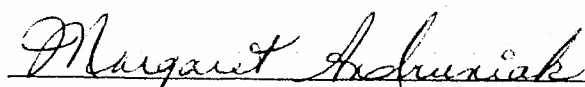


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

resources available and what treatment there is, Mr. Vermillion, and make a serious effort to do something about it. You are still a young man, and you can do something with your life; but continuing this way is just going to wind you up spending alot of time in jail because you're at the stage now, Mr. Vermillion, because of the offenses of violence, that the public is entitled to some protection; and if that means basically taking you out of circulation for the rest of your life, then that is what will have to be done. It is not unheard of to have applications of that nature being successful, particularly in this jurisdiction for continued offenses of violence. So you better think about that.

That will be all.

Certified a Correct Transcript:



Margaret Andruniak  
Court Reporter