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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

MOSESEE KILABUK (NOWDLUK)



Transcript of the Oral Sentencing Delivered by His Honour Judge R. M. Bourassa, sitting at Frobisher Bay in the Northwest Territories, on Wednesday, September 14th, A.D., 1983.

APPEARANCES:

MR. J. SHIPLEY: Counsel for the Crown

MR. J. BOVARD: Counsel for the Defence



1 THE COURT: The accused, Mosese Nowdluk, also known as
2 Mosese Kilabuk is convicted of a number of offences:
3 offences contrary to Section 294(a), 306(1)(b), 133(3),
4 306(1)(b), 306(1)(b), 312(1), 306(1)(a), and 294(b), and
5 he candidly admitted to his counsel and instructed counsel
6 to advise the court that the crimes were committed so he
7 could go back to jail. He candidly admits and instructed
8 his counsel to advise the court that he enjoys the programs
9 there, and that his crimes are calculated specifically to
10 keep him in jail.

11 This crime spree, starting the 5th of August and ending
12 the 2nd of September, was commenced within weeks of being
13 released from imprisonment for causing a disturbance. The
14 accused has ten criminal convictions on his record starting
15 in 1982 which included break, enter and theft.

16 It is quite the situation where the court is being
17 used, and crimes are being committed, in order that a person
18 can go back to jail and enjoy the amenities there. I don't
19 know if that speaks more to the conditions that this accused
20 was raised in or to the conditions in jail. In any event,
21 I don't think that is a great consideration for the court.
22 The court can only impose a sentence that is appropriate
23 under all the circumstances, although I believe I can take
24 crimes committed for the sheer purpose of going back to jail
25 somewhat in aggravation, I am somewhat reluctant to do so
26 without the benefit of research and submissions by counsel.

27 It would appear to me at first blush that it can be so



1 used: People are entitled to be protected from criminals and
2 that includes people who live in houses, people who own
3 property, people who carry on businesses. They are all
4 entitled to be protected from the actions of this accused,
5 whether it is for the purpose of going back to jail or not.

6 The whole purpose of the criminal justice system is to
7 protect the community. As I have indicated in R. v. Ittaigaitok
8 this court is going to impose sentences for offences contrary
9 to s. 306 that are more in keeping with the sentences that
10 are imposed in the south. I see no reason why the people of
11 Frobisher Bay or Rankin Inlet or anywhere else shouldn't be
12 entitled to the same protection as is given citizens in the
13 south. I might just indicate to Mr. Nowdluk that in the
14 south a Break, Enter and Theft conviction even for small
15 things such as the court is faced with today, after a second
16 or third conviction, may result in jail terms in excess of
17 three years. I want Mr. Nowdluk to contemplate that because
18 if he is back before this court again on a Break, Enter and
19 Theft, then in my estimation, without trying to tie my
20 discretion in the future or any court's discretion, in my
21 estimation that is the kind of sentence Mr. Nowdluk is going
22 to be looking at. He has had ample opportunity to rehabilitate
23 himself, but refuses. He has chosen this particular path
24 and will have to bear the consequences.

25 Under these circumstances, the court must respond by
26 way of a deterrent sentence, if not to deter Mr. Nowdluk,
27 hopefully to deter other people who feel that Break and



1 Enter offences are a casual thing that they can commit without
2 serious consequences.

3 I would adopt the same reasoning as I gave in R. v.
4 Ittaigaitok with respect to sentencing of this accused.

5 A few comments on some of the particular offences: With
6 respect to the offence of stealing the Honda three wheeled
7 cycle, contrary to s. 294(a): while I can accept that the
8 accused did not ultimately see to the final disposition
9 of the vehicle by dumping it in Frobisher Bay, I don't
10 think he can escape the consequences of what happened to
11 that vehicle being that he was the agent that effected
12 its theft, and he simply abandoned it to the hands of other
13 wrong doers. I don't think he can come to the court now
14 and say, "well, it is not my fault it ended up in the bay."

15 With respect to the offence involving theft under \$200
16 contrary to s. 294(b) on the 1st of September: the most common
17 offences in this jurisdiction are offences of violence and
18 offences of theft, but luckily, so far, for some reason there
19 has been very few robberies in this jurisdiction, and it is
20 distressing to see an accused prepared to do violence to
21 someone in order to obtain money to pursue his goal, be that
22 either of getting into jail or having money to spend on the
23 video games. Standing outside the Legion waiting for prey,
24 as it were, is something that must be discouraged.

25 In taking all of these matters into account; the matters
26 that are normally considered as set out in Morrisette and
27 Overton, which counsel haven't specifically addressed, but



1 which I know are behind their submissions. I note that.
2 The accused has pleaded guilty, which I am taking into
3 account. I am taking into account what has been said on
4 his behalf by his counsel, and I am of the view that a global
5 sentence is appropriate for all of the offences or for one
6 offence for which all other sentences will be made concurrent.
7 I seek to make an impact on the accused in terms of
8 deterrence with respect to the offence of Break, Enter and
9 Theft.

10 Therefore, with respect to the offence occurring on
11 the 2nd of September, a break and enter with intent contrary
12 to s. 306(1)(a) of a facility belonging to the people of
13 Frobisher Bay, I am going to impose a jail term of two years
14 less a day. With respect to the offence of break, enter
15 and theft on the 29th of August and possession of property
16 obtained by an offence punishable by indictment on the 27th
17 of August, I am going to impose a sentence of one year
18 concurrent on each. With respect to the offence of the 28th
19 of August, a break, enter and theft into house 1040, there
20 will be a sentence of one year concurrent. With respect
21 to the offence of failing to attend court in accordance with
22 an undertaking contrary to Section 133(3), the accused
23 will be sentenced to one month in jail concurrent. With
24 respect to the offence of break, enter and theft into house
25 187, there will be a sentence of two years less a day,
26 concurrent. With respect to the offence of theft of property
27 of a value exceeding \$200, contrary to s. 294(a), there will



1 be four months in jail concurrent. And finally, with respect
2 to the offence of theft under \$200 contrary to Section 294(b),
3 there will be six months in jail concurrent.

4 I hope the accused will take the opportunity that I am
5 sure will be afforded to him while he is in prison to do
6 something with his education so that when he is released from
7 prison he won't be back before this court again. He will
8 have some way of surviving on the street without committing
9 crimes or finding himself back in jail.

10 MR. BOVARD: Thank you, Your Honour.

11

12 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

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Certified a correct transcript,

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Laurie Ann Young
Laurie Ann Young
Court Reporter.

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