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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER:

HER MAJESTY THE QUEEN

VS

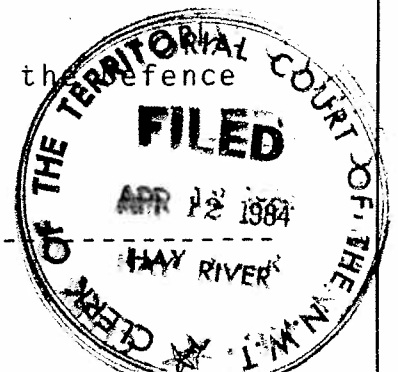
DAVID MARTIN HEHN

Transcript of Proceedings of an Oral Judgment given
by His Honour Judge T. B. DAVIS, sitting at Fort
Liard in the Northwest Territories on Wednesday,
April 4, A.D. 1984.

APPEARANCES:

MR. J. SUTTON Counsel for the Crown

MRS. C. WALKER Counsel for the defence





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THE COURT: Mr. David Martin Hehn has entered a plea of guilty to a charge of stealing property from Mary Bossenmaier of a value in excess of \$200 between the 29th of July and the 3rd of August, 1983, when he accepted two buffalo hides from her along with the funds for the tanning of the hides and, then, did not return the buffalo hides to her from a business that he was operating, therefore, violating Section 294(a) of the Criminal Code.

Since the time of receiving the money and the hides, the accused had sold the hides to other persons but has now repaid those persons who purchased the hides when he received them back from the purchasers; and he has arranged through the R.C.M.P. to deliver the hides to the informant, Mary Bossenmaier, so that all persons who were involved with the matter have been compensated or restitution has been made.

In trying to determine the proper sentence to be imposed for any offence under the Criminal Code, the Crown must consider the protection of the public and, therefore, must impose the type of penalty that will deter both the accused and others from committing offences. There is, however, a special Section of the Criminal Code which says that under certain conditions, even for serious offences, the Court may consider, if it is in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, order that the accused be discharged absolutely or upon conditions. The cases have allowed the Courts to take into consideration special circumstances when it has been



1 shown that it is likely that the public would understand and
2 accept the lenient approach by the Court to allow a person
3 not to have a criminal record if in doing so it would have
4 more serious results than otherwise and if the accused has
5 proven himself to be entitled to special consideration by the
6 Courts through his past and his background.

7 Crown Counsel has, I think, has fairly and
8 properly presented to the Court the attitude of the Crown on
9 behalf of Her Majesty The Queen and said that the Crown would
10 not be seriously opposed to the granting of a conditional
11 discharge to this particular accused who, through his solici-
12 tor, has given information to the Court that he has been a
13 good member of the communities in which he has lived in the
14 past and that he has no other offence on any record whatso-
15 ever. She has also, as solicitor for the accused, through the
16 evidence of the accused and a employee of the Government,
17 advising on the outcome his employer what would be suitable
18 for the accused, indicated that the accused has had a job that
19 he has developed into a career and now has been transferred
20 by the Northern Affairs Department for which he works and had
21 temporarily been suspended as a result of being charged with
22 this offence.

23 Possibilities of adverse and extreme results
24 of the offence have been explained to the Court very properly
25 by the enquiring Officer on behalf of the Government who must
26 now make recommendations as to what penalty should be imposed
27 by the Government or what further action should be considered.



1 There is a possibility that the accused can be given some
2 form of warning or a demerit point but may even have a recom-
3 mendation for his discharge resulting from this offence.

4 In this instance, it would seem that a dis-
5 charge from employment for a person who has been involved with
6 one offence and one only could therefore be considered by this
7 Court as being an extreme and adverse affect on both the
8 accused and contrary to the best interests of the public.
9 The accused has also indicated that he has been very embar-
10 rased by his involvement with this offence, and he has apolo-
11 gized and tried to make good the loss of other people by pay-
12 ing compensation and making restitution.

13 His involvements in the communities in the
14 past indicates that he has participated in administrative
15 functions and chairman of various committees and presidents
16 and vice-presidents of various sports of sports organizations
17 so that it has impressed the Court that possibly in this
18 instance the accused has suffered enough by having to appear
19 before the Court.

20 On that basis, on the basis that it appears
21 that it may not be contrary to the public interest, I am going
22 to today instead of convicting the accused consider a condi-
23 tional discharge so that if the accused then obeys the direc-
24 tion of the Court on the conditions that are set, at the end
25 of the term during which the conditions must be met, there
26 will be no record outstanding against the accused.

27 The Court does act in this way on various



1 occasions on special circumstances, and I think the accused
2 has proven through his attendance in court today and through
3 his solicitor's submissions and by his background that he is
4 not deserving of this special consideration. I do, however, feel
5 that so that all persons, both the accused and others, know
6 that offences must not be committed, I am still going to
7 require that the accused perform some community service work
8 which is similar to what he has done in the past by partici-
9 pating in functions and actions that are of a benefit to the
10 community; and that will be his form of public payment for an
11 offence rather than having a criminal record or rather than
12 paying a fine.

13 In that particular way, I am going to make
14 the discharge conditional upon the accused performing 100
15 hours community service work to be performed within a period
16 of--at this time, I will take the recommendation from the
17 accused through his lawyer to determine how long it might be
18 that he would require before he could perform 100 hours of
19 community service work because that would depend, therefore,
20 on the length of the probation period.

21 MRS. WALKER: Sir, can I also speak with Social Services
22 to see what the programs are because quite often they need
23 to give input as to how long it takes to find 100 hours of
24 community service work.

25 THE COURT: It might be that, of course, if the accused
26 is not going to be in this location, then he would be in a
27 somewhat different situation than he finds himself in.



1 MRS. WALKER: I believe the Social Service people from
2 Fort Simpson are here. Can I just take a minute to speak with
3 her?

4 THE COURT: Sure.

5 MRS. WALKER: It appears, sir, that Social Services in
6 Fort Simpson could find 15 hours of community service work a
7 week, and Mr. Hehn has also indicated that he could manage
8 15 hours--I'm sorry--a month--that he could manage 15 hours
9 of community service a month--15 to 20 hours a month.

10 THE COURT: Could the accused perform 20 hours a month,
11 then?

12 MR. HEHN: All depends on the fire season, sir.

13 THE COURT: Community service work--for the information
14 of the accused and others present--community service work is
15 any work that a person performs on behalf of the community or
16 on behalf of somebody within the community and does not get
17 paid for it. So it could include such things as cutting wood
18 for elderly people who otherwise would have difficulty doing
19 it, and it can mean participating in the supervision of sports
20 events or participating in any public functions, an employee
21 without pay to organize or arrange for any activity that is
22 being carried out by anybody within the community; and ordin-
23 arily, in the work itself, to locate and do it is the respons-
24 ibility of that person who is directed to do it. The Probation
25 Officers and the community service workers are not required
26 to provide the work, but the accused person himself or the
27 probationer is the one who is responsible for finding and



1 doing the work; but it then must be done to the satisfaction
2 of and to be assured to have been completed by the records of
3 the Probation Officer.

4 So in this instance, knowing that the accused
5 has participated in many activities in the past and probably
6 can involve himself very quickly in doing something on behalf
7 of the community, I will take the recommendation of his
8 Counsel as to how long he requires in order to perform that
9 amount; and that is why I have explained it in a little more
10 detail than usual.

11 You think six months would be sufficient,
12 then?

13 MRS. WALKER: I believe so, sir.

14 THE COURT: All right, then, 100 hours community service
15 work to be performed within a period of six months to the
16 satisfaction of the Probation Officer. Upon completion of
17 that work, the Probation Order will be in effect for a six-
18 month period; and if that work is complied with, then the
19 discharge will become absolute.

20 Do you understand that, Mr. Hehn?

21 MR. HEHN: Yes, I do, sir.

22 THE COURT: I also would be prepared to have the tran-
23 script of my findings or, if need be, the findings and the
24 transcript of the entire proceedings available to Mr. Boutet
25 who has given evidence here. If he wishes to have the same,
26 you can contact the Clerk of the Court. I would ask for a
27 transcript of the decision in this matter for our purposes as



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well so that Mr. Boutet will know that I have considered this as a special situation and do recommend a fair and lenient consideration be given to this particular accused who has proven to me that he is deserving of that consideration.

Certified a Correct Transcript:

Margaret Andruniak

Margaret Andruniak
Court Reporter