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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

JOSEPH LOUIS ABEL

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Transcript of the Oral Judgment delivered by His Honour  
Judge R. M. Bourassa, sitting at Yellowknife, in the  
Northwest Territories, on Monday, October 31, A.D. 1983.

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APPEARANCES:

MR. M. E. N. ZIGAYER      On behalf of the Crown

MS. P. SPENCE              On behalf of the Defence





1 THE COURT: Joseph Louis Abel is convicted today of four serious  
2 offences: He is convicted of an offence of pointing a fire-  
3 arm, contrary to Section 84(1) of the Criminal Code; he is  
4 convicted of resisting a peace officer, contrary to Section  
5 118(a) of the Criminal Code, those two offences occurring on  
6 the twenty-fourth of June; and offences of aggravated assault,  
7 contrary to Section 245.2 of the Criminal Code, and further  
8 resisting a peace officer, contrary to Section 118(a) of the  
9 Criminal Code. Convictions have been entered. It is the  
10 Court's duty today to impose a sentence.

11 The offences occurred in the Hamlet of Snowdrift,  
12 located on the east arm of Great Slave Lake--it is a small  
13 community. It has been often said in Territorial Court, by  
14 Mr. Justice de Weerd in Supreme Court of the Northwest  
15 Territories, and by Mr. Justice Tallis as he then was of the  
16 Supreme Court of the Northwest Territories, that the Courts  
17 are justified in taking community conditions into account in  
18 imposing sentence. I believe I can, to a small degree, in  
19 this case note or take into account the conditions in Snow-  
20 drift--and that is that there is a significant problem in  
21 Snowdrift with crimes of violence, and there is a significant  
22 problem in Snowdrift with respect to the control or abuse of  
23 alcoholic beverages. I can't go any further than that.

24 The Crown has invited me to find or infer that there  
25 is a gross or severe problem with violent offences in Snow-  
26 drift. I don't believe that I can or that it would be safe  
27 to do so without statistics to that effect. I think



1 statistics would be most helpful in some sentencing situations.  
2 and if the Crown is able to provide them in these situations,  
3 I think the Court would welcome them.

4 The offender is twenty-three years of age, I under-  
5 stand. He has been before the Court and convicted of criminal  
6 offences in every year since 1978, totalling approximately  
7 twenty criminal offences since 1978. He has experienced the  
8 whole gambit that the Canadian correctional systems offer:  
9 He has had the passing of sentence suspended, he has been  
10 placed on probation on a number of occasions. He has had  
11 concurrent sentences; consecutive sentences; short, sharp  
12 sentences; long sentences; one day in jail; months in jail;  
13 years in jail. In fact, he was not out of jail two or three  
14 months when he was back in a confrontation with the law in  
15 June of this year.

16 Defence counsel makes an impassioned argument that  
17 because the offences that the Court is dealing with here  
18 today are liquor related, and that there has been a liquor  
19 problem in the past, that there is a spark of hope with  
20 respect to Mr. Abel; therefore rehabilitation is still open  
21 to Mr. Abel and the Court. As I say, the argument is an im-  
22 passionate one, but I have to say that I am not persuaded. I  
23 feel that at some point in this man's career, the Court must  
24 start weighing the concerns of the community as being more  
25 important than the concerns of a particular offender. I  
26 believe that Mr. Abel has passed that balance point. The  
27 Court has shown in 1978, in 1979, in 1980, and as late as



1 1981, by way of suspended sentences or very lenient sentences  
2 its concern for this individual, its concern for Mr. Abel,  
3 its concern that he be afforded every opportunity to rehabil-  
4 itate himself. Without denying that the opportunity and the  
5 possibility of rehabilitation is still open to Mr. Abel, I  
6 believe that the issue of rehabilitation is best left now,  
7 at this stage in this man's life, to the administrative boards  
8 and tribunals that are set up within the penitentiary system.  
9 In that regard, I follow and I adopt, with respect, the  
10 position taken by the Quebec Superior Court in R. v. Levesque,  
11 (19 Criminal Reports, p. 43) and leave the matter of rehabil-  
12 itation to those tribunals. It has very little weight in my  
13 deliberations today.

14 Dealing with the offences, I believe it was properly  
15 brought to my attention by the Crown as an aggravating situ-  
16 ation was that the accused, firstly, was out of jail not  
17 three months when he was again in conflict with the law.  
18 After having made his election and awaiting trial for the  
19 offences that allegedly took place on the twenty-fourth of  
20 June, the accused on the twenty-eighth of August is back in  
21 another confrontation with the law. As I understand our  
22 law, this is an aggravating factor.

23 I take into account that there were weapons involved,  
24 that there was a very real risk to the public, and that this  
25 is a situation that is all too common in the North. In his  
26 instructions to counsel, Mr. Abel has set forth his rational-  
27 izations of the events, and they are just that--rationalization



1 They don't impress this Court. Mr. Abel states that he  
2 didn't really mean to stab anyone, that he held a knife to  
3 Mathew Abel's throat only to scare him a little bit. He  
4 didn't really mean to hurt anyone by pointing a rifle, that  
5 the rifle was broken, that it wouldn't shoot anyway. It was  
6 just to scare a few people. The Court has heard these kinds  
7 of rationalizations so often in the past. Recently, in  
8 Igloolik, two youngsters were drinking, and after one young-  
9 ster had killed the other youngster by putting a broom handle  
10 through his eye, he comes to Court saying, "I really didn't  
11 mean to do it," I know he didn't mean to do it, but the  
12 combination of the drink and atmosphere led to tragic results.  
13 No one "means to do it"--but "it" is done time and time again  
14 when weapons are mixed with liquor. I point out to Mr. Abel  
15 that I am sure he is aware that under our law a man is taken  
16 to intend the natural consequences of his acts. And if Mr.  
17 Abel is going to drink and carry out this kind of conduct, he  
18 is going to have to accept the consequences. See, for example,  
19 R. v. Ross, (1983 NWTR 254). It is no salvation, it is nothing  
20 that can be accepted in mitigation for Mr. Abel to come to  
21 Court to say that he wouldn't have done this if he had been  
22 sober, or he really didn't mean to do it, and maybe because  
23 he was drunk the knife slipped. Nobody has any business  
24 holding a knife to somebody else's throat. Nobody has any  
25 business pointing a gun at anyone else, under any circumstances.

26 This kind of offence so common in the North, in fact  
27 almost half of all criminal offences cleared by charge in



1 1981, which is the last year that the Government of the  
2 Northwest Territories has complete statistics for, are crimes  
3 of violence, crimes involving the very same factors the Court  
4 is presented with today.

5 There must be a deterrent sentence, notwithstanding  
6 the fact that the community of Snowdrift has washed its hands  
7 of Mr. Abel and, it is submitted to me, have no interest in  
8 what happens to Mr. Abel. There must be, in my view, a sen-  
9 tence that is going to deter any other people who are like-  
10 minded so that those kinds of people, when they are sitting  
11 down having an afternoon drink, think twice before they pick  
12 up the nearest knife or nearest gun or nearest club. There  
13 is no room in our communities for this kind of violence. If  
14 the only way they are going to be prevented from committing  
15 this kind of crime is through deterrence--that is to say,  
16 causing them to fear to offend--then so be it.

17 With respect to the two offences of assaulting a  
18 peace officer, I would only opine that in both instances the  
19 peace officers exhibited incredible restraint, admirable re-  
20 straint in their dealings with Mr. Abel. It is a credit to  
21 both the constables and their training that they were able  
22 to handle this situation without someone being killed or  
23 wounded. It has been said by Mr. Justice Tallis that the  
24 peace officers in the far and scattered settlements of  
25 the Northwest Territories, virtually alone, are entitled  
26 to protection by the Court and the full support of  
27 the Courts when, in carrying out their



1 duties, they are assaulted or the arrests that they lawfully  
2 perform are resisted. It must be clearly understood in these  
3 isolated and remote communities that the peace officers  
4 acting legally have the right to arrest and take people into  
5 custody, and conversely that those that seek to question  
6 their authority, fight with them and assault them, can expect  
7 to be treated harshly by the Courts. The peace officers are  
8 in these communities to protect the community.

9 A potential for the complete breakdown of law and order in  
10 the event that these kinds of charges are not met with deter-  
11 rent sentences is self-evident.

12 Mr. Abel, would you stand please? I am taking the  
13 principle of totality into account by imposing consecutive  
14 sentences, which in my estimation will add up to a total  
15 sentence which is appropriate for all of the offences, but  
16 by looking at each one individually they may be less than  
17 what is called for. Mr. Abel, on the Section 84(1) offence,  
18 I sentence you to five months in jail. With respect to the  
19 Section 118(a) offence of the twenty-fourth of June, I sent-  
20 ence you to four months in jail consecutive. With respect  
21 to the Section 245.2 offence, the wounding, I sentence you to  
22 ten months in jail consecutive. With respect to the Section  
23 118(a) offence of the twenty-eighth of August, I sentence you  
24 to five months in jail consecutive. These times will be  
25 served in a federal penitentiary.

26 MR. ZIGAYER: Your Honour, the matter of the Section 98 order?

27 THE COURT: Yes, the Crown has asked for an order pursuant to



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Section 98 of the Criminal Code as a result of the conviction under Section 84(1), and as well as a result of the conviction under Section 245.2. I am satisfied that an order should issue. I am aware of the Weyallon case; however, I note that that case is currently under appeal. I secondly note that the facts of this case are significantly different than the facts of the Weyallon case. And thirdly, I note that there is no evidence before me that this accused requires firearms or weapons for his personal survival or survival of family. There will be an order prohibiting this accused from possessing firearms or ammunition for a period of five years from today.

Thank you Mr. Zigayer, Ms. Spence.

(AT WHICH TIME THIS MATTER WAS CONCLUDED.)

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Certified a correct transcript

*Edna Thiessen*

Edna Thiessen, Court Reporter