



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

- and -

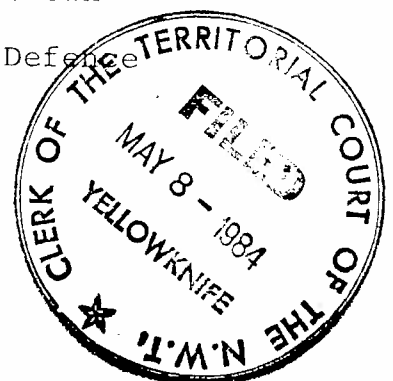
BRENDA JANE HODGSON

Transcript of the Oral Sentencing delivered by His Honour Judge R. M. Bourassa, sitting at Yellowknife, in the Northwest Territories, on Thursday, December 15, A.D. 1983.

APPEARANCES:

MS N. BOILLAT On behalf of the Crown

MR. L. SEBERT On behalf of the Defence





1 THE COURT: Brenda Jane Hodgson is convicted of an offence
2 of theft over two hundred dollars, contrary to Section 294
3 (a) of the Criminal Code. The offence of theft took place
4 under circumstances such that the actions of the accused
5 fall within the category or term of 'breach of trust' in that
6 the accused was an employee and in the position of bookkeeper
7 and general office person in charge of handling the day-to-
8 day operations of the victim. She handled money, and over
9 a period approximately two and a half months managed to re-
10 move from her employer's receipts the total sum of eighteen
11 hundred and four dollars.

12 The loss would have escaped all detection but for
13 an audit that was done sometime after she had left her employ-
14 ment in Pine Point and gone south.

15 The accused woman is twenty-one years old, and
16 now living in Saskatchewan, and who has no previous
17 criminal convictions of any kind. The stark reality is, as
18 unblemished as the accused's past may be, she is confronting a very
19 harsh reality, and that harsh reality is a jail term. I
20 think I can say reasonably accurately that here in the North-
21 west Territories offences involving a breach of trust almost
22 invariably result in a term of imprisonment. There have
23 been exceptions in the past, such as the Beed decision by
24 Judge Ayotte of the Territorial Court; however, exceptional
25 circumstances were present.

26 Also, there are other decisions which Counsel
27 have kindly referred me to, and I have noted, in the past

1 where the existence of exceptional circumstances may justify
2 a non-custodial sentence. Some of those exceptional circum-
3 stances include the normal mitigating factors, but to a
4 greater degree than usual. Here restitution has already
5 been made, that there is evidence of remorse, and of course
6 the size of the loss is important.

7 I was concerned at the outset with the issue of
8 imprisonment in that in a recent decision of Mr. Justice
9 Marshall in R. v. Fraser, the accused, convicted under
10 Section 111 of the Criminal Code of Canada of a public breach
11 of trust received a non-custodial sentence; my concern was
12 whether or not, or at least what effect that decision should
13 have on Territorial Courts in imposing sentences involving
14 'breach of trust.' I believe I would be safe to say had
15 this accused been before this Court on almost any other
16 offence, she would not be facing a jail term. The Courts
17 usually bend over backward to protect people from going to
18 jail the first time they commit a criminal offence in the hope
19 that they will rehabilitate themselves and will acknowledge
20 their error and not become involved in confrontations with the law again

21 The decision of Mr. Justice Marshall, I believe,
22 can be distinguished from the instant case. Firstly, it is
23 dealing with an overt breach of trust situation; that is to say,
24 breach of trust that is specifically provided for in the
25 Criminal Code, versus the offence which I am dealing with
26 today in which the trust situation is an aggravating factor
27 but it is not the essential part of the information. That



1 to me would indicate that dealing under Section 111, a penalty
2 should even be more severe. Mr. Justice Marshall states at
3 numerous points in his decision that jail terms just follow
4 breach of trust situations, and he is saying this in obvious
5 recognition of the jurisprudence of the Northwest Territories.
6 He goes on to distinguish the case against Fraser on the
7 basis that it is the first time that section has ever been
8 used in the Northwest Territories; and in that sense, it's
9 exceptional. For those reasons, I take it, a jail term was
10 not imposed. I would opine, therefore, that the ruling of
11 Mr. Justice Marshall in Fraser does not detract from the
12 principle in the Northwest Territories that any offence
13 involving a breach of trust be it reflected in the nature of
14 the offence or an aggravating factor by exceptional
15 circumstances, still warrant a term of imprisonment.

16 Sadly, I don't believe there are any except-
17 ional circumstances here. I've already mentioned the accused
18 has no criminal record and that were she convicted of simple
19 theft or break and enter or possession of housebreaking tools
20 or theft from the mails, she probably would not be looking at
21 a jail term. However, there is nothing in the accused's
22 background or situation that I have before me that I can
23 classify as exceptional.

24
25 In aggravation, the
26 offence took place over an extended period of time, two and
27 a half months. I note that there seems to be an increase



1 in this kind of offence or at least a prevalence of this
2 kind of offence in the last year or so. However, I don't
3 think it's enough for me to say we are now being plagued
4 with this kind of offence which warrants, perhaps, a more
5 dramatic sentence. What is often used, in many cases that
6 the Crown have provided me, in mitigation is the fact that
7 restitution has been paid. I note the past tense. I don't
8 believe that should be taken to mean that those with money
9 get off lightly. Payment of full or even partial
10 restitution is a concrete indication to the Court that the
11 accused is truly remorseful and anxious to pay his or her
12 debt to society and be done with the problem. This accused
13 has come to court initially offering partial restitution,
14 and today offering full restitution.

15 I note that the crime is not sophisticated. It
16 was simply a question of pocketing the cash that was there.
17 There was no effort made to cover up the entries in the
18 books to hide this theft. I note as well that the accused
19 has virtually, if not ruined herself, severely compromised
20 herself in terms of future employment as a clerical or office
21 girl. If the details of this conviction become known to
22 prospective employers, I am not optimistic that this
23 person will be able to secure employment.

24 I note as well that this was a private trust
25 that was breached; although, the accused was in effect in a
26 public service. The public generally was not in-
27 jured as a result of her activities.



1 I note the reasons of Judge Ayotte, as he then
2 was, in the Beed decision who comments at length that for
3 some people a significant fine may be just as much a deter-
4 rent as a term of imprisonment and combinations of various
5 sentencing tools that the Court can use can have different
6 impact on different individuals, but it should not be taken
7 automatically that jail is a deterrent. I think any jail
8 sentence that is to be a deterrent is addressed more to the
9 public generally than to those that are in a similar position
10 as Ms Hodgson, to remind them of the importance placed on their
11 role in their employment and the trust placed on them. I would hazard
12 the opinion that this accused doesn't have to go to jail to
13 be deterred in the future.

14 The accused, as I've said, has offered to make
15 full restitution. I'm going to take her up on her offer.
16 I believe it goes a long way towards mitigating the sent-
17 ence if an accused is prepared to make good the loss that he
18 or she has wrought on a member of our society.

19 If that loss can be made good, so much the better, both
20 for the victim and for the accused.

21 I am concerned that the accused is still a young
22 woman. I don't want to have the repercussions of this
23 unfortunate incident in her life dragging around her neck
24 for the next few years. I don't want to have her drag them
25 back to Saskatchewan. If she is making a new start in Sask-
26 atchewan, so much the better, and I hope she can put this behind
27 her as soon as possible.



1 So, I am going to order restitution, which ob-
2 viously is going to involve a probation order. However, the
3 accused will not be subject to reporting requirements or
4 other conditions. I am taking the fact that she is
5 offering full restitution in substantial mitigation. In
6 other words, I am reducing the term of imprisonment which
7 I think is appropriate because she has at the eleventh hour,
8 as it were, offered restitution. Without the restitution, I
9 think a term of imprisonment in the neighbourhood of four
10 months would properly reflect the gravity of the situation,
11 the amount of money stolen, the premeditation, the other
12 aggravating and mitigating factors. The accused has one
13 asset which she can dispose of relatively quickly from which
14 the restitution can be paid. As I say, I hope the accused
15 can get back on her feet and get these events behind her as
16 quickly as possible.

17 Ms Hodgson, would you stand, please? On this
18 charge, I am going to sentence you to a term of imprisonment
19 of two months. In addition to that, I am going to place you
20 on probation for--Mr. Sebert, I'll take your guidance or
21 assistance in this matter. I'm proposing six months. I
22 don't see that--I don't want to put her on probation for two
23 years, because that means the probation order is going to
24 end up in Saskatchewan, and it's just going to complicate
25 her life down there; and I don't want to do that at this
26 point.

27 MR. SEBERT: Yes, Your Honour, I think six months would be



sufficient.

1
2 THE COURT: The terms of the probation order are that the
3 accused keep the peace and be of good behaviour. Those are
4 the statutory terms of the probation order. In addition,
5 there will be an order that the accused make restitution to
6 the Clerk of the Court in the amount of eighteen hundred and
7 four dollars, which shall be paid to Pineridge Enterprises
8 Limited, the victim of the crime; and that restitution is
9 to be paid in five months.

10 I point out, Ms Hodgson, if you fail to comply
11 with the terms of the probation order, you may be guilty of
12 an offence called breach of probation, brought back to this
13 Court, and if found guilty be exposed to a penalty of a max-
14 imum of five hundred dollar fine or six months in jail or
15 both.

16 You'll have your client wait--or the probation
17 order will be sent to the institution. She can sign it
18 there.

19 MR. SEBERT: Yes, Your Honour, thank you.

20 THE COURT: Thank you, Counsel, for the cases and the atten-
21 tion you've given this matter.

22 (AT WHICH TIME THIS MATTER WAS CONCLUDED.)

23 -----
24 Certified a correct transcript

25 *Edna Thiessen*
26 Edna Thiessen, Court Reporter
27