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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

EDGAR DESJARDINS

Transcript of the Reasons for Judgment Delivered by
His Honour Judge R. M. Bourassa, sitting at
Yellowknife in the Northwest Territories, on
Thursday, November 17th, A.D., 1983.

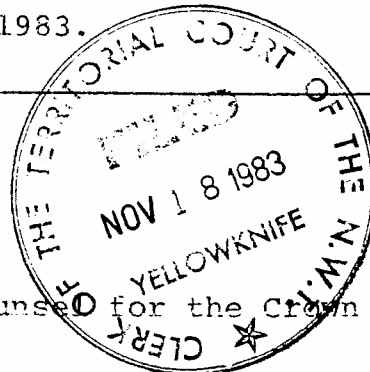
APPEARANCES:

MS. N. BOILLAT:

Counsel for the Crown

MR. L. SEBERT:

Counsel for the Defence





1 THE COURT: The accused, Edgar Desjardins, is convicted of
2 an offence under Section 234 of the Criminal Code, his
3 eleventh drinking and driving offence, and an offence under
4 Section 85 of the Criminal Code.

5 Needless to say, and it is candidly admitted, the
6 accused is an alcoholic, and had been drinking on both of
7 the occasions that are before the court.

8 In dealing with the Section 234 offence: the accused,
9 as I have mentioned, has a criminal record. His last
10 sentence for an offence under the drinking and driving
11 section was eighteen months imprisonment, and the Crown
12 is asking the court to impose a sentence for this offence
13 in excess of eighteen months. This follows the normal,
14 accepted practice of increasing penalties based on the logic
15 that an accused will at some point in time react after he
16 keeps getting punished more and more severely and come to
17 the conclusion that further offences will result in very
18 harsh treatment, therefore persuading him to stop offending.
19 I think that is a fair approach and a proper approach in most
20 circumstances - but not with an alcoholic.

21 Mr. Desjardins, as I say, is an alcoholic, and he has
22 a heart condition. He is fifty-seven years old. He is
23 a threat to society. He is a threat to the lawful users
24 of the highways and streets. He is a threat to pedestrians
25 on the street, but he is not a threat because he is a gross
26 criminal. He is a threat because he is a drunk. To me, to
27 put a man in jail for two years for impaired driving when



1 we see people charged and convicted of manslaughter getting
2 two years or a smidgen more, the system starts looking out
3 of whack in a sense. I am very reluctant to impose such a
4 sentence.

5 I have no information or evidence before me that there
6 was an accident or personal injuries involved in this
7 particular incident or in any of the incidents in the past.
8 As I say, the accused isn't a master criminal, a member of
9 the Mafia or whatever group you want to call it - he is just
10 a drunk.

11 I am limited in what I can do, however. I have only
12 three options: probation, jail or a fine. I think I know
13 what I want to do with the accused, but in a sense it involves
14 a mixing of the penalties involved for both convictions, which
15 I don't believe is legally a proper thing to do. Each offence
16 must involve its own penalties and stand independantly,
17 related only to other offences through the principle of
18 totality, and yet dealing with the impaired, probation is
19 inappropriate. Jail and probation may be appropriate with
20 conditions with respect to ownership of motor vehicles, but I
21 am concerned about the situation if there is a failure to
22 comply with the conditions in the probation. The only recourse
23 then will be for the court to start dealing with the man on
24 the breach of probation charges which will very quickly,
25 assuming the worst, lead to jail terms if there are
26 consistent breaches. In light of the alcoholism, that is a
27 real possibility.



1 With respect to the Section 85 offence, I am satisfied
2 that a jail term is appropriate. It is beyond me why people
3 have to drive around with rifles and shotguns in their
4 vehicles up and down the streets of Yellowknife. We
5 regularly see the half-ton trucks go by with two or three
6 rifles loaded up on the back window. It is just beyond me
7 why that is necessary, why Mr. Desjardins has to drive his
8 vehicle with two guns behind the seat. There is no reason
9 for it. It is incomprehensible. We are not in the wild west,
10 we don't have terrible creatures and alien beings attacking
11 cars and people up and down the highways. The availability
12 of guns in this jurisdiction for someone to resort to after
13 a dispute or an argument is something that must be deterred.
14 Time and time again this court sits and hears matters where
15 an accused is drunk and seeks in some way to strike out at
16 his antagonist. He reaches for the nearest thing, and it
17 isn't a brick, it is not a stick - it is a gun, and that
18 is what must be deterred.

19 What I would like to do with the accused is to put
20 him on probation with some conditions, but I am concerned
21 that if I do so that there must be very significant
22 consequences if the accused does not live up to the terms
23 of the probation. If I don't put the accused in jail for
24 a term of eighteen months or two years, but rather try and
25 protect the public by placing the accused on conditions, then
26 it must be understood that there will be substantial
27 consequences for failure to live up to his obligations, and



1 I am just not satisfied that a breach of probation conviction
2 with the accompanying penalties is such a substantial conse-
3 quence as to assume compliance with conditions by this
4 accused. I am going to do what I said I don't think I should
5 do, and that is to say I am going to use both convictions and
6 mold the sentences in effect to give the accused one sentence
7 but from two sources, and I am doing that because on the one
8 hand I believe it is important to protect the public from
9 this accused, yet on the other hand, I just can't see putting
10 this accused in jail at his age and in his condition for this
11 offence for two years. He may deserve it, and I have no doubt
12 that he does deserve it, but I think there has to be some
13 compassion and some attempt to look at an alternative rather
14 than let this man kill himself in jail.

15 What I propose to do is this: With respect to the
16 Section 234 offence, first I am going to prohibit the accused
17 from driving for a period of five years pursuant to the
18 Motor Vehicles Ordinance.

19 Secondly, the accused must be well aware at this point,
20 acutely aware - he has been in jail now for a few weeks, he
21 is sober - that he is looking at an eighteen month term of
22 imprisonment for impaired driving charges. He has heard the
23 Crown attorney ask for two years imprisonment, and that I
24 believe is a fair and natural consequence for the offence,
25 and that is a fair and fit sentence under most circumstances.

26 With the accused conscious of that, what I am going to
27 now is suspend the passing of sentence. I am not going to



1 impose a sentence on Mr. Desjardins today. I am going to
2 place the accused on probation for a period of two years.
3 There will be terms on that probation. First, he is not
4 to own directly, indirectly, in his own name or beneficially,
5 any motor vehicle of any description or any kind. I want it
6 specifically understood that that means that his wife,
7 his friends, his family cannot own a motor vehicle for
8 him.

9 Secondly--

10 (The accused begins to gasp and convulse.)

11 MR. SEBERT: Excuse me, Your Honour.

12 THE COURT: Would you like to recess briefly?

13 MR. SEBERT: Yes, Your Honour.

14 ----RECESS FOLLOWS.

15 (UPON RESUMING AFTER AN ADJOURNMENT.)

16 MR. SEBERT: Your Honour, Mr. Desjardins has been taken to
17 the hospital. I understand that Your Honour is going to be
18 going away tomorrow, and that the next day that you will
19 be back won't be until Monday the 28th I understand from the
20 clerk. I guess we will have to set this over to a definite
21 time.

22 THE COURT: Can we proceed with sentencing in his absence?

23 MR. SEBERT: I would certainly like to. He was here for the
24 finding of guilt, and if we possibly can, I would like to
25 in view of--I realize it is an indictable offence, Your
26 Honour, but the accused was here for the beginning of the
27 sentence.



1 THE COURT: Miss Boillat?

2 MS. BOILLAT: Your Honour, I have no objection with proceeding
3 ahead with sentence.

4 THE COURT: Can we? Never mind if none of us objects!

5 MS. BOILLAT: Section 85, seeing it is an indictable matter,
6 it is my understanding that the accused has to be present
7 for all matters relating to that offence, Your Honour.

8 THE COURT: Well, Section 577 would appear to cover the
9 situation. I can permit the accused to be out of the court
10 during the whole or any part of his trial, and sentencing
11 is part of a trial, on such conditions as the court considers
12 proper. What do you say, counsel?

13 MR. SEBERT: Your Honour, I urge you to accept this as being
14 something that would come within Section 577(2) (b).

15 THE COURT: You are his counsel, Mr. Sebert.

16 MR. SEBERT: Yes, I am.

17 THE COURT: You have instructions to act today.

18 MR. SEBERT: I do.

19 THE COURT: You have instructions to make representations
20 on sentence which you have done and you are prepared to,
21 on behalf of the accused, consent to this matter proceeding
22 and finishing in his absence?

23 MR. SEBERT: I am, Your Honour.

24 THE COURT: What does the Crown say?

25 MS. BOILLAT: That is fine, Your Honour.

26 THE COURT: It is not a question of agreement. Does that
27 bring us within subsection (b)? Can either of you see any



1 prejudice to Mr. Desjardins?

2 MR. SEBERT: I see no prejudice at all, Your Honour. I
3 assume he will be taken to the hospital, and I will under-
4 take to deliver a letter explaining the balance of the
5 sentencing, the whole of the sentencing to him this afternoon
6 if he is at the hospital.

7 THE COURT: Miss Boillat?

8 MS. BOILLAT: Your Honour, I understand that there would be
9 no prejudice caused to the accused and Defence counsel is
10 agreeing to his absence.

11 THE COURT: Alright. Well, I will, based on the consent
12 then, the concurrence of Mr. Sebert, I will conclude.

13 I have indicated that there is to be a licence
14 prohibition pursuant to the Vehicles Ordinance of five years.
15 I am going to suspend the passing of sentence with respect
16 to the Section 234 and place the accused on probation for
17 two years. I have dealt with the no vehicles to be owned
18 directly or indirectly.

19 Secondly, I want the accused, or his agent, which if
20 you are still acting, Mr. Sebert, that will be you I assume,
21 to appear in court on a date that is mutually acceptable
22 between the Defence and the Crown, but a date within two
23 months of today's date, and confirm or advise the court
24 that the two motor vehicles formerly owned by the
25 defendant have in fact been sold. I understand today that
26 they have been transferred to a child of the accused, and
27 that the intention is that those vehicles are to be sold.



1 I want confirmation that they are sold, and I make it a
2 condition of the probation order that those vehicles be
3 sold to someone who has no relationship with the accused.

4 Mr. Sebert, I will recite the provisions of Section
5 662 and 664, which I will ask you to bring to the attention
6 of your client. Under the provisions of the Criminal Code,
7 if the accused does not comply with any of the terms of his
8 probation, he may be charged with an offence called breach
9 of probation, and if convicted, subject to a term of
10 imprisonment of six months or a fine of \$500 or both. In
11 addition to that, if the accused is convicted of any criminal
12 offence while on probation which includes breach of probation
13 he may be brought back to this court and sentence may be
14 imposed for this Section 234, the original offence. Your
15 client is already aware that the last time he got eighteen
16 months. Again sticking my neck out, it would seem to me
17 a logical conclusion for a person to arrive at that should
18 Mr. Desjardins not comply with the terms of the probation,
19 it would be reasonable for him to expect a term of imprison-
20 ment of eighteen months if the Crown brings this matter
21 back for sentencing.

22 Now, I have already indicated that I am, in order to
23 try and properly address the situation, mixing the sentencing
24 which I don't think I should do, but I feel compelled to do
25 to keep this man from spending the rest of his life in jail.

26 I also feel that a term of imprisonment for the
27 impaired driving is appropriate. However, I cannot suspend



1. sentence and put him in jail at the same time for the
2. impaired driving. I have suspended the passing of sentence
3. specifically to get those conditions and to ensure that
4. there is a significant repercussion on the accused, if
5. he doesn't abide by those conditions, and I am only doing so
6. in my attempt to protect the public. The public can't be
7. protected by this man going to jail. His past record shows
8. that. Maybe it can be protected by keeping him off the road.

9. With respect to the Section 85 offence, there will be
10. an order pursuant to Section 98(2) prohibiting the accused
11. from possessing any firearms, ammunition or explosive
12. substances for a period of five years. In addition to
13. that, for the reasons I have already given, I am going to
14. impose a jail term of four months, and I say this because
15. if counsel feel I erred, then the matter should be brought to
16. a higher court, and I want my reasoning clearly understood.
17. I am imposing a jail term under Section 85 which is perhaps
18. a little heavier than I would have if I had been dealing with
19. the Section 85 only. I am including in effect in the four
20. months imprisonment a period that is probably more properly
21. tied to the impaired driving. However, that is what I have
22. done , and counsel have the reasons why I have done it. If
23. counsel feel I am making an error then I would invite an
24. appeal so that better minds than mine may find a different
25. or better disposition of this case. Does that take care
26. of the matter?

27. MR. SEBERT: Yes, sir. I have the licence.



1 THE COURT: Surrender it to the clerk.
2

3 (AT WHICH TIME THESE MATTERS WERE CONCLUDED.)
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6 Certified a correct transcript,
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8 Laurie Ann Young
9 Laurie Ann Young
10 Court Reporter
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