IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

Her Majesty the Queen

Complainant

and

Michael Andrew CRAWFORD

Defendant

A transcript of the Reasons for Judgment of His Honor Judge M. Bourassa, delivered in the above matter at Yellowknife N.W.T. on the 28th day of January AD 1983.

Appearances:

Mr. David Gates appeared on behalf of the Crown.

Mr. Hersh E. Wolch QC appeared on behalf of the Defendant

The Court:

I would like to thank Mr. Gates and Mr. Wolch for their assistance in this matter. Sentencing is never an easy process, however, with their assistance, a proper determination can be made.

This case is no different from any other in terms of the process by which an appropriate sentence is arrived at. Following the words of Mr. Justice Culleton, in R v Morrissette, with which counsel are very well familiar, and in R v Overton, there are a number of factors to be taken into consideration, and given the appropriate weight that these circumstances call for. Those factors are variously the degree of meditation involved in a crime, the circumstances surrounding the offence, the violence or degree of participation, the gravity of the offence, the attitude of the offender, the previous criminal record of the offender, if any, the offender's age and mode of life, his character, the existence of a pre-sentence report, if any, and recently some writers and some cases have indicated that its appropriate to consider the incidence of that particular crime in the jurisdiction, the sentences normally imposed for that kind of offence, and the element of mercy if its appropriate.

Referring to those two decisions, R v Overton and R v Morrissette, the aim of sentencing, or the goal to be arrived at in weighing those various factors is the

protection of society from this offender, and from this kind of offence. The punishment, or an expression of public disapproval over this kind of offence and the accused's conduct, general deterrence, and specific deterrence and reformation.

I won't go through the facts in detail - the agreed statement of facts that forms part of this sentenc ing process is available, and sets out the details surrounding the offence quite adequately. Suffice it to say that from the agreed statement of facts there appears to be no premeditation.

The circumstances surroudning the offence are all too common here in the Northwest Territories - there was an orgy of drink. Two good friends were on a drinking binge that took place over at least a day. Substantial amounts of alcohol were involved. The accused was on holiday on Cinnamon Island, and going to Yellowknife every day to obtain more alcoholic beverages to continue his drunk. For some reason the accused was seized with some violent urge, which caused him to express an intention, qualified as it might have been from his state of intoxication, to one of the two friends that were there that he was going to shoot both of them. He went out and shot one friend. Fortunately Mr. Furlong was able to take away the bullets and avoided any harm to himself. Mr. Daigle received a fatal wound.

I note as well by inference the accused could

have been so drunk or intoxicated as to be completely unawarw as to what transpired, because I find from the facts that the accused went back to the scene of the crime, and spent some hours there, again in a drunken condition, on the 22nd of July, a week and a half later. He was seen by Susan Essory at the bridge on the Yellowknife River going up river around noon, and was seen coming back around seven o'clock p.m., quite intoxicated, having overturned his canoe. Obviously what had transpired there on the 16th of July remained in the conscious mind of the accused.

With respect to the gravity of the offence, surely there can be no more serious offence than that of taking the life of another individual. That that is one of the most serious offences involved in our criminal justice system is in my view amply evidenced by the maximum penalty, which is life imprisonment, and I take it of course that the maximum term is to be reserved for the worst example of the offence.

I would refer to the R v Kroners. The words of Mr. Justice Culleton seem to be quite eloquent in his commentary on the law with respect to sentencing for this type of offence:

> "In dealing with the issue of manslaughter, it has been rightfully said that manslaughter is an offence which varies greatly in its seriousness, from close to inadvertence to one end, and to murder at the other. Thus the sentences imposed will vary as greatly as the seriousness of the particular offence. Each

case must therefore be judged on its particular facts".

It is obviously unknown to the court - counsel and the court can only speculate what it was seized Mr. Crawford and caused him to shoot his best friend. It is suggested in argument that perhaps he was acting, that he was acting very close to an automaton. I can accept that Mr. Crowford was quite drunk, however, I can't accept the argument that he was so close to automatism as was suggested by the defence. I find in the agreed statement of fact that he did express an intention to shoot the deceased. He picked up the rifle, loaded one round, and he went out and effected his intention. I can accept the degree of intoxication must have been substantial, given the evidence of the agreed facts that are before me. In my view the gravity of the offence under the particular circumstances must be considered serious. In the decision of R v Henry, a decision of the New Brunswick Court of Appeal, it is fairly similar to this case on its facts, in that an accused had been drinking with a friend; he took a .22 calibre rifle and waited outside his friend's home, and as his friend stepped from the house with his mother-in-law he shot him in the heart. He was found to have one hundred and seventy-six milligrams of alcohol in a hundred millilitres of blood. His chances of rehabilitation were rated as excellent, and he was

sentenced to ten years imprisonment upon a guilty plea to manslaughter.

It is suggested that the event that has transpired has somehow shown the light to Mr. Crawford, and is going to cure him of his alcoholism, and assist him in treading the straight and narrow, as far as staying out of trouble with the law in the future, that that is some good that has come out of this. I have great difficulty in accepting that any good can come out of the taking of another man's life in circumstances such as this. That society should be expected to tolerate or bear that kind of price for one man's rehabilitation from alxoholism I believe is unacceptable. That Mr. Crawford recognizes his problem with alcohol at this point is a factor I can take into consideration in mitigation, and I do, which brings us to the attitude of the offender. I have been told, and I have no reason to question it, that Mr. Crawford is remorseful, that he has had difficulty in coming to grips with the decease of his friend, that from the evidence of Mr. McNeil that Mr. Crawford is, has the - I think his words were the best chance of any to be ultimately rehabilitated in terms of his problem with alcohol. But I note that Mr. McNeil predicated that comment with the words that "continued attendance with Alcoholics Anonymous, and various support agencies" is required to correct this individual's problem with alcohol. In any event I am

prepared to accept that his attitude is positive at this stage, although there are certainly difficulties ahead for him. We are told that he is a worker and a provider, which is another positive element on Mr. Crawford's side, it operates in his favor. I note that the particular incident that the court is dealing with is the result of depression because he had lost his job. The court has to have some concern that in these days when jobs are at a premium that the evidence of rehabilitation that I have received today has to be accepted with caution in that the circumstances that apparently contributed to this offence still exist. They are still out there. There is no guarantee that Mr. Crawrord is going to have a job. There is no guarantee that Mr. Crawford will not get depressed again.

Another factor to be taken into consideration is the previous criminal record of the accused, and the accused does have a previous criminal record involving some fifteen criminal convictions. The record of course is taken in a reverse sense. Had the accused no record, then this could be taken into mitigation. Having a record, there is no mitigation available.

However, I accept what has been stated by counsel on behalf of Mr. Crawford that the record has been qualified, or can be qualified to a degree, in that the offences occurred in three bunches or groups, as it were, and that since 1975 the accused has stayed

out of serious criminal trouble with the courts. Since then he has been convicted of two charges of impaired driving, but there are no convictions for other offences subsequent to 1975. Before 1975 there is one offence contrary to Section 246(2), and a number of other property related offences, or drug offences. I must take the accused's record into account, but I take it into account with some qualifications, as quite fairly and properly pointed out by defence counsel, which, in my view, lessens the impact of the record.

In terms of the accused's age and mode of life, it would appear that he has much going for him; a spouse that is standing by him in these difficult times, a family that the accused is desirous of supporting, and I accept that without qualificaton. His past as pointed out by defence counsel amply indicates that he is responsible in terms of supporting his family, but as happens so often it seems in these kinds of violent offences the offence itself is almost incompatible with the past background of the accused in many ways. If one compares the accused's work record, the strong relationship he has with his spouse, this seems almost incompatible with this degree of violence. In any event I accept the accused's antecedents in some mitigation.

I have no pre-sentence report to consider before me.

One of the other factors I have to consider is the incidence of crime in the jurisdiction, and that is not a matter to be speculated upon by the court, but I do have the submissions by Crown counsel, which I believe is an important submission, and a valuable one to the court. It would appear that this kind of offence is increasing here in the Northwest Territories, in that in 1982 there have been a total of seven manslaughter and/or murder convictions, whereas from 1976 to 1982 there were only seven in that whole period. I believe I can take that into account, that for some reason this kind of crime is becoming more prevalent in this jurisdiction, and I believe that is an issue the court must address in sentencing.

I thank counsel for the number of authorities they have provided to the court in terms of the sentences cumsomarily imposed for this kind of offence or a similar offence. I believe it is fair to go back to the words of Mr. Justice Culleton, that in manslaughter offences there is nothing that can be classified as "tariff", and that the sentences must vary considerably. I have already referred to the Henry decision where ten years was felt to be appropriate. I note that the decisions referred to me by the Crown have indicated something in the range of three to five years. Those previous dispositions are of assistance to the Court in determining a sentence here, but the court

has to function beyond merely averaging decisions that are put before it, or picking a range which will hopefully please everyone. That's not the function of the court, in my view. The court must address this particular offender and this particular offence.

Perhaps backstepping for a moment I would refer to the decision R v Kennedy, dealing with the incidence of this particular crime in the Territories, a decision of the Saskatchewan Court of Appeal, again by Mr. Justice Culleton:

> Manslaughter is a grave offence, not only because it is so recognized by the law, but because it involves the unlawful killing of a human being. Because it is a grave offence it does not follow however that there is a standard punishment. Of necessity the circumstances in each case differ, with the result that the sentences imposed may justifiably show a wide variation. During recent years the incidence of manslaughter convictions has been increasing in this province. That being so, the courts in determining appropriate sentences must give consideration to the facts of deterrence and protection of the public. Too great lenience in the case of sentencing may lead to the conclusion that the courts do not look on the offence of manslaughter as a serious one, and this would be an incorrect conclusion.

It would appear from the increase of the incidence of this kind of crime in the Territories that those words are most appropriate.

In terms of the aim of sentencing I can accept arguments by defence counsel that deterrence of this particular individual has to be one of the lesser items in terms of goals. This was an expressive crime. It

was not a thought-out crime. It was not something that was planned over months. It was not one to gain a great advantage. It may very well be that this offender is one of the kind that will commit an offence such as this, and never be before the courts again.

However, I believe the court must clearly reflect that this is one of the most serious offences, and that general deterrence - that the public clearly understand, if there is any confusion in the public-s mind at all, that this kind of offence is one of the most serious, and one that society and the courts cannot tolerate. I believe also that punishment is an appropriate considera-tion, or an appropriate aim here. "Punishment" is not a popular word or concept in many jurisdictions, but in an expressive kind of crime such as this, I believe punishment in that kind of context is appropriate, and there is nothing wrong with imposing a sentence that to a degree effects a "punishment" upon the accused. This accused has taken the life of another human being, and that cannot be tolerated. In addition I believe the sentence must reflect, and in fact any sentence must reflect, the moral values of this society of ours, and reinforce those moral values. It is therefore proper for a sentence to refelct those moral values, and to reflect public abhorrence and disapproval of this kind of conduct and this kind of activity that led to the death of Mr. Daigle.

Finally, there is reformation as an aim of sentencing, and it would appear that the prospects for reformation of this particular accused are good. The Crown Attorney has expressed qualifications; there are difficulties ahead if we accept the argument that the accused's problems are all related to alcohol, in that no one but the accused can solve that problem.

However, there are many positive elements in favor of the accused that have to be taken into account, and I do. Obviously if the accused learns from this experience, and changes his way ov living, so that this never occurs, or is never even contemplated again in the future, the protection of society will be achieved.

Taking those matters into account then, as well as the elements that operate in aggravation, in attempting to weigh those factors as best as I can, I have arrived at what I believe to be an appropriate sentence. I point out as well that I am taking into account that the accused has pleaded guilty; he has spent seven months in custody, and none of that period can in any be attributed to delay or prevarication by the accused. In fact, full time should be taken into account, and I do take it into account in imposing sentence.

Mr. Crawford, would you stand, please.

On this charge I sentence you to four years in Federal penitentiary. I have been asked to make a recommendation that this time be served in the Yellowknife

Correctional Centre. I choose to decline to make any recommendation, either one way or another, and leave that determination to the Yellowknife Correctional Centre officials, or others, who have the programs or policies in effect to allow them to make that kind of determination, and I feel that that matter is best left with them, in that there may be other things that they can take into account.

Mr. Gates:

Your Honor, I believe that an order under Section 98(1) is mandatory.

The Court:

Yes, there will be an order under Section 98(1) prohibiting the accused from possessing any firearm or explosive substance for a period of five years.

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