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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

HANK MARK LAFFERTY

Transcript of the Oral Sentencing delivered by His Honour Judge R. M. Bourassa, sitting at Yellowknife, in the Northwest Territories, on Tuesday, December 13, A.D. 1983.

APPEARANCES:

MS N. BOILLAT On behalf of the Crown

MS C. WALKER On behalf of the Defence





1 THE COURT: Hank Mark Lafferty is convicted of two offences,
2 one breach of probation, and one driving while disqualified
3 or while prohibited.

4 I would say at the outset that generally speaking
5 I believe both of those offences merit a term of imprison-
6 ment. They both involve the same concept, and that is the
7 deliberate, wilful disobedience of a court order. Normally,
8 court orders that are imposed are orders designed to try and
9 guide and direct someone away from troublesome situations or
10 situations that lead them into more confrontations with the
11 law. Normally, they are used in a lenient sentence. This
12 accused has had many of those opportunities before
13 the court.

14 For a court to order a prohibition of
15 driving, and to have an accused ignore that order is
16 not something that can be treated lightly. Prohibitions
17 on driving are made to protect the public. They are an al-
18 ternative to, perhaps, a more rigorous term of imprisonment
19 or a heavier fine. They are appropriate, efficient, vis-a-
20 vis deterrence; and I don't believe any court can stand
21 by and see people ignore that kind of order without
22 serious repercussions following. The situation is the same
23 in Ontario, it is the same in Alberta. Those that choose
24 to ignore driving prohibitions, even without the criminal
25 record that this accused has, normally face a term of im-
26 prisonment of at least fifteen to thirty days.

27 With respect to the breach of probation, I

1 acknowledge that his record only discloses one previous
2 breach of probation. However, I have to note, as it glares
3 before me, that his accused was put on probation on his
4 second time before the criminal courts, the conviction date
5 being the fifth of October, 1982. He was placed on pro-
6 bation for a year. From that time until July of 1983, the
7 accused was convicted of fifteen offences, both criminal
8 and vehicle ordinance. Probation is a special promise to
9 the court, and the accused knows that; and he has totally
10 ignored his obligations following the making of that
11 special promise. I would have thought that would have
12 been brought home to the accused in May of 1983, when he
13 was sentenced to twenty-one days in jail for breach of
14 probation. Obviously, it didn't. One is tempted, I suppose,
15 if the nail isn't driven home on the first blow to keep
16 hammering away harder and harder blows until the accused
17 learns that he has to obey the law; and I think a sentence
18 well in excess of that twenty-one days would be called for
19 in these circumstances.

20 I have before me the statement of the father
21 that he is going to take his sone out into the bush and
22 that is going to solve everything. I accept that, but
23 with respect, that solves absolutely nothing. It doesn't
24 solve anything more than putting the accused in jail for
25 six months. All it does it take him away from the life
26 that he is going to have to confront and the life
27 he is going to have to reconcile with.



1 There is no way of escaping the presence of liquor.
2 There is no way of escaping the presence of drinking buddies.
3 They are here, you can't hide from them. There is nowhere
4 in the world that these kinds of problems can be hidden.
5 The accused has to pick himself up by his own bootstraps
6 and decide what he's going to do in his life. If he wants
7 to go in the bush and learn to hunt and trap and survive
8 that way, that's great. But if he thinks he's going to go
9 in the bush and stay out of trouble, he is dreaming, because
10 he's going to be back here in June or July, or back in May
11 for all we know. He may not even go. And the same problems
12 that he is unable to cope with now that have lead him into con-
13 frontation with the law in the past, are going to be present.
14 He may very well end up back in court.

15 I can take into account the accused is no master
16 criminal. He is a young man that has
17 convictions for a lot of nuisance charges. I am concerned
18 that in May of 1983, he was convicted of serious offences--
19 possession of weapons, breach of undertaking, breach of
20 probation, assault--and it would appear to be a progression.

21 I am concerned that the accused is a menace to the lawful
22 users of the highway, and even pedestrians. What this man
23 does not seem to understand is that the rules with respect
24 to driving permits and insurance is there to protect people
25 and are not there as impediments. As I mentioned in dis-
26 cussing sentence with counsel for the Defendant, if some
27 poor soul happens to be walking down the street, totally



1 innocent, and is struck by this accused who may
2 or may not be drinking, who has no insurance
3 and no licence, that person can be hos-
4 pitalized for months and suffer a total disruption of her
5 life, total disruption and, perhaps, devistation of her
6 financial condition, all because this accused can't be
7 bothered to live by the rules everyone else has to live by.
8 To expose the public to that kind of risk in my mind is
9 totally unacceptable.

10 I am told in submissions that since December
11 there has been a change in the accused's life, that he is
12 responding more positively to obligations at home and in
13 the community. By responding to obligations, he is not
14 committing criminal offences and appears to be staying out
15 of trouble. It appears--his father states he hasn't seen
16 him drinking. If that is the case, it is certainly a step
17 in the right direction in my estimation. Whether that con-
18 dition will continue, I must express reservations. Three
19 weeks do not a life make, that is for certain.

20 In any event, I am concerned, and I don't want
21 to see this boy institutionalized. Your lawyer will explain
22 what that means to you, Mr. Lafferty. I don't want to
23 expose the public to any more danger as is necessary, and
24 if there is a possibility that this young man can straighten
25 himself out--and he is the only one that can do it--I don't
26 want to deny him that possibility. On the other hand, if
27 he is back before the courts again, crying for special



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attention and crying salvation at the eleventh hour in the plea for more leniency by the court, I believe the court is going to have to treat that without much attention. I am prepared to, in the hope, and only for that reason, that the accused is on the road to straightening himself out and that he will continue on the path he has chosen, I am prepared to take a chance.

I direct the Court Reporter to make a transcript of my remarks, and if this accused is back in court again for criminal offences and is convicted, these reasons I have given today will be available for the judge at that time. I want it clearly understood I do not believe from all of the facts before me that leniency is totally warranted. I am extending some leniency only because of the submissions of Mr. Lafferty's lawyer. Based on her submissions and some of the evidence that she called that there may be a hope for this individual to straighten himself out. If that is the case, I cannot ignore it. If he is only abusing the court, if this is only a temporary remission, I can say with confidence the courts will be here, and the courts will be waiting for Mr. Lafferty to come back. If he is back and is to be sentenced, then the next judge, if there is a different one that is presiding over such sentencing, will clearly understand the lenient treatment I have afforded Mr. Lafferty today is something that is being done as an exception and may very well indicate to the next presiding judge it is not a situation that is



1 to be followed.

2 I hope you take these words to heart, Mark, and
3 you keep your nose clean and stay out of trouble. Nobody
4 wants to see you back here. Would you stand, please?

5 On the breach of probation, I am going to impose
6 a hundred and fifty dollar fine, in default fifteen days
7 in jail. I am going to place you on probation for two years.
8 The only term of the probation order I am concerned with is
9 that you not drive a motor vehicle under any circumstances.
10 Do you understand that?

11 THE ACCUSED: Yes.

12 THE COURT: There is also in addition to that the normal
13 statutory term that you keep the peace and be of good be-
14 haviour, which simply means stay out of trouble.

15 With respect to the Vehicle Ordinance offence, I
16 am going to impose a fine of a hundred and fifty dollars.

17 Do you require time to pay those fines?

18 THE ACCUSED: Till after March.

19 MS WALKER: He does require time, sir.

20 THE COURT: I'll give the accused three months to pay the
21 fine.

22 You've got the chance you asked your lawyer to
23 ask for you. I hope you don't waste it.

24 Anything else, Ms Walker?

25 MS WALKER: No, sir, thank you.

26 (AT WHICH TIME THIS MATTER WAS CONCLUDED.)

27

Certified a correct transcript:

Edna Thiessen
Edna Thiessen, Court Reporter