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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

v.

MARK ERKIDJUK

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Transcript of the sentencing delivered by His Honour  
Judge T. P. Davis sitting at Frobisher Bay, Northwest  
Territories, on Wednesday, March 9, A.D. 1983.

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APPEARANCES:

MR. D. GATES

Counsel for the Crown

MR. J. BOUVARD

Counsel for the Defence



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1 THE COURT: Mr. Mark Erkidjuk, a 19- year old resident  
2 of Frobisher Bay, has today entered pleas of guilty to  
3 three charges under the Criminal Code; the first being that  
4 on the 18th of January, he stole the sum of \$200 while armed  
5 with a prohibited weapon contrary to Section 303 of the  
6 Criminal Code; the second being that on the same date he  
7 used a firearm while committing an indictable offence contrary  
8 to Section 83(1) of the Criminal Code; and in so doing, he  
9 admitted to violating the terms of the probation order that  
10 were in effect contrary to Section 666 of the Criminal Code.

11 At 10:40 o'clock in the evening on January the  
12 18th, the accused, while masked and armed, pulled a gun on  
13 a taxi driver and stole \$200 from the driver after which he  
14 left the taxi and disappeared behind the house. He then had  
15 hidden the sawed-off rifle in the sleeve of his father's  
16 clothing in a cold-storage area at his home.

17 Upon being arrested, the accused admitted to  
18 having committed the offence, indicating that he had stolen  
19 the money so that he could buy passage for his common-law  
20 wife and daughter back to Frobisher Bay after they had been  
21 separated as a result of some type of family argument.

22 The accused had been before the Courts in June  
23 of 1982, and even though he had been charged with theft, had  
24 been given the opportunity for a discharge of the conviction  
25 so long as he obeyed the probation order and was able to  
26 keep out of trouble for a period of one year.

27 Unfortunately during that period of time,



1       however, the accused became involved with the offences before  
2       the Court today.

3               I have had an opportunity to hear counsel for  
4       the Crown and for the accused refer to a number of cases  
5       that have been decided by the Supreme Court of the Northwest  
6       Territories and by my brothers in Territorial Court arising  
7       from somewhat similar circumstances of that before the Court  
8       today.

9               As a sample, Judge Halifax had imposed a sentence  
10       of four years imprisonment for a robbery because the accused  
11       who had been appearing before him had a criminal record.

12               Mr. Justice de Weerd't in March of 1982 had  
13       imposed a period of one year less a day on a charge of  
14       robbery and a term of one year consecutive for the using of  
15       a firearm in the commission of the offence, having taken  
16       into account the fact that the accused at that time, who was  
17       Nowdlak Kilibuk, had already spent four and a half months in  
18       gaol.

19               This would indicate that Mr. Justice de Weerd't's  
20       sentence would have ordinarily been more than the two years  
21       imposed had he not served some period of time in advance of  
22       the sentencing.

23               As I review or have reviewed the law on robbery,  
24       it is considered, as Judge de Weerd't point out and as other  
25       Courts have always indicated, to be a very serious offence,  
26       and I am surprised at the obvious leniency of the Court but  
27       note in his decision that he indicates the possible erring



1 on the side of leniency.

2 Since I would have been inclined to have  
3 imposed a much more sever sentence than what has been suggest-  
4 ed by counsel before me, I am of the opinion that this Court  
5 must attempt to impose sentences that are somewhat similar  
6 to other sentences imposed by other members of this Court  
7 and by the Supreme Court of the Northwest Territories.

8 The Chief Judge in this Court in a case pointed  
9 out by defence counse, R. v. Andrew Dialla, November of 1982,  
10 also at Frobisher Bay for somewhat similar circumstances in  
11 that a taxi driver had also been robbed, received a total  
12 of 21 months in gaol; and therefore, I am taking into account  
13 the fact that other Courts in this jurisdiction have imposed  
14 sentences ranging between 21 months and slightly over two  
15 years for similar circumstances.

16 The accused before me has only a short record  
17 in that in March and June of 1982, he was involved with a  
18 resisting or obstructing a police officer and theft contrary  
19 to Section 294 of the Criminal Code.

20 I do believe, however, that because of the  
21 severity of the offences before me, I have no alternative but  
22 to impose punishment for the sake of deterrence to the  
23 accused and to insure that other people who are inclined  
24 to go do other offences are deterred from feeling that the  
25 Courts deal with this lightly.

26 I am of the view that a term of less than two  
27 years which I intend to impose on the accused is being very



1 lenient, and it may be if this type of offence occurs in the  
2 future, that it will be the opinion of the Court that a more  
3 severe and longer term of imprisonment may be required.

4 I am also required, as pointed out by Crown,  
5 to impose two other orders; one that the accused will be  
6 restricted from possession of a firearm for a period of  
7 at least five years; and I am also controlled by the fact  
8 that I must impose, because of the seriousness of the offence,  
9 at least a period of one year imprisonment.

10 Under the circumstances, and having reviewed the  
11 cases, I will enter convictions against the accused for the  
12 three offences to which he has pleaded guilty; and for the  
13 charge of stealing while armed contrary to Section 303 of  
14 the Criminal Code, I will impose a term of one year in gaol;  
15 and for the charge under Section 83(1) of the Criminal Code  
16 of using a firearm while committing an indictable offence, I  
17 will impose one year less one day in gaol.

18 MR. GATES: I am sorry, you cannot do that. If you are  
19 going to impose a term of less than one year, it would have  
20 to be on the 303.

21 THE COURT: It is the same effect, but on a different  
22 order.

23 MR. GATES: Unfortunately, sir, under 303, the minimum  
24 period of imprisonment is one year.

25 THE COURT: I see, on the Section 303, it will be one year  
26 less a day, and for the Section 83, a period of one year in  
27 gaol, terms to run consecutively.



1                   With regard to Section 666(1), I will impose a  
2 period of six months in gaol, the term to run concurrently.

3                   I impose the sentence concurrently in this  
4 instance because I am taking into account the overall effect  
5 and the totality of the situation which appears to me to  
6 require something in the vicinity of two years in gaol in  
7 total.

8 MR. BOUVARD:       Thank you very much, Your Honour.

9 THE COURT:         Do you understand all that?

10 MR. GATES:         Your Honour, the firearm order, under Section  
11 98.

12 THE COURT:         Yes, under Section 98, a firearm order will be  
13 applied so you will now be restricted from possession of  
14 firearms or ammunition for a minimum period of five years.

15                   I am imposing the term of five years because  
16 that is the minimum that is allowed. Any other orders?

17 MR. GATES:         Sir, the weapon involved is prohibited so  
18 regardless of who the owner is, I would submit it ought  
19 properly be forwarded to the Crown for destruction.

20 THE COURT:         I will so order that the prohibited weapon  
21 which is the subject of the matter, the .22 calibre rifle,  
22 shall be forfeited for destruction. That would be at the  
23 expiry of the appeal period, I would presume.

24 MR. GATES:         Yes, sir.

25 THE COURT:         Do you have anything, Mr. Erkidjuk, that you  
26 wish to say on that matter?

27 MR. BOUVARD:       I do not think so, Your Honour.



1 THE COURT:

That will be all then, thank you.

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4 Certified a correct transcript

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6 Catherine Metz

7 Catherine Metz  
8 Court Reporter

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