- TC CR 83 008

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

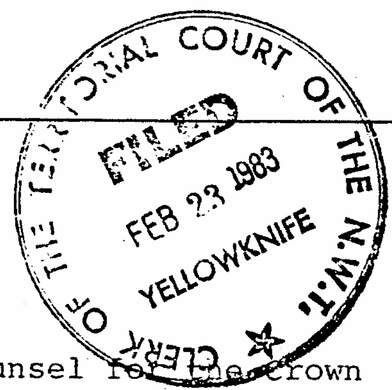
IN THE MATTER OF:

HER MAJESTY THE QUEEN

v.

LEO NAPAYOK JR.

Transcript of the reasons for sentence delivered by His Honour Judge R. M. Bourassa sitting at Yellowknife, Northwest Territories, on Friday, December 10, A.D. 1982.



APPEARANCES:

MR. J. SHIPLEY	Counsel for the Crown
MS. P. SPENCE	Counsel for the Defence

1 THE COURT: ...apayok Jr. is convicted of an offence of
2 break and enter and theft contrary to Section 306(1)(b)
3 of the Criminal Code of Canada.
4 The facts briefly are these: The accused,
5 within three weeks of his release from the Yellowknife
6 Correction Centre after serving time for an iden-
7 tical offence, in order to save face as a result of some
8 boasts made to acquaintances with resepct to some money
9 that he supposedly had in his possession, broke and entered
10 the Rankin Inlet Housing Association office. While inside,
11 he stole a small safe, carried the safe away with him, and
12 through the use of a gun and a hammer managed to break the
13 safe open, from which he removed $1,441. The cash that was
14 stolen has been irretrievably lost and squandered by the
15 accused.
16 Fingerprint evidence lead the police to
17 arrest the accused, and upon his arrest he cooperated in
18 providing a confession.
19 The accused has an extensive criminal record
20 which I have to refer to in some detail. The accused was
21 first convicted as an adult on the 18th of June, 1979, for
22 five counts of Break and Enter, one with Intent and the
23 rest with theft. On each of those five counts he received
24 a suspended sentence and one year probation.
25 This is the normal accepted way for courts
26 to deal with youthful first offenders in an attempt to point
27 out to such youthful offender that he has made a mistake

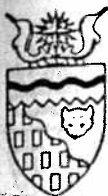
and to provide him with some assistance so that that mistake will not be repeated.

Within six months, the accused was convicted of two offences of Break, Enter and Theft and a breach of probation. On these matters he was fined $100 and $50 respectively. Within three months of that run in with the law, the accused was convicted of three offences, two break enter and thefts and another breach of probation. This time the accused was given two months in jail on the break and enter offences, each concurrent, and he was given one month in jail on the breach of probation, again concurrent, for a total of two months in jail.

He obviously served less than four weeks in jail because on the 7th of May, 1980, thirty days from the time of that conviction, he was convicted again for two charges of break, enter and theft for which he was given a total of one month and two weeks in jail; one month on one count, and two weeks consecutive on the next.

For a period of one year, the accused stayed out of trouble as far as the courts are concerned until May of 1981, when again he was convicted of break, enter and theft contrary to Section 306 of the Criminal Code of Canada. For that he was sentenced to six months in jail, a significant leap from the one month he had received a year earlier.

At that time he was also sentenced for three other offences of break and enter, one with intent and two for theft, for which he received on each one month



1 concurrent.

2 Within a month of being released from serving
3 time on those offences, as I understand the facts, the
4 accused was again convicted of an attempted break and enter
5 on the 31st of December, 1981, for which he was sentenced to
6 18 months in jail in Territorial Court which was reduced
7 on appeal to 12 months; and now the court has the circum-
8 stances before it today where the accused had been released
9 for some three weeks before he committed this offence.

10 The court is entitled, as pointed out by both
11 counsel, to take any significant number of factors into
12 account in arriving at sentence.

13 There are the factors that have been set out
14 in the decisions of Morrissette and Overton. There are
15 some factors that have been referred to in some other cases
16 as well, and some factors referred to by some learned
17 authors in recent publications.

18 Because of the seriousness of the charge I am
19 dealing with, it is a maximum of 14 years in jail, and my
20 intended disposition, it is appropriate that I spend some
21 time on them.

22 With respect to the factors raised in the
23 Morrissette and Overton decisions, there is the question of
24 pre-meditation. I have no qualification in arriving at the
25 conclusion that there was a fair degree of pre-meditation
26 involved here.

27 Mr. Napayok found himself in an intolerable

1 situation in that he had boasted to friends that he had
2 $9,000. In fact, he had no money, and he had to resolve
3 that problem in order to save face as soon as possible.
4 The resolution of the problem involved
5 and enter in order to obtain money. The safe was taken away
6 from the premises, and extensive efforts were required to
7 break it open to obtain the money. This is far removed
8 from a juvenile "pop and chip" breakin, as they are commonly
9 referred to in this jurisdiction.
10 The factors that I have just mentioned also go
11 to the circumstances surrounding the commission of the
12 offence. Insofar as the gravity of the crime committed is
13 concerned and the maximum sentences obviously of 14 years in
14 jail, it is interesting to note, and I think I can take
15 judicial notice of the fact, that based on government
16 statistics, break and enters are the most common crime in
17 the Northwest Territories, break and enters and related
18 property offences make up more than three-fifths of the
19 convictions for criminal convictions in adult court.
20 Offences of break and enter are com-
21 mitted in every one of the forty odd communities that this
22 court travels to, and are by and large, as I have indicated
23 from the government statistics, the largest single crime
24 and the largest single problem that society has to deal with
25 here in the Northwest Territories as far as crime is con-
26 cerned.
27 With respect to the attitude of the offender,

I have difficulties as to arriving at any firm conclusions as to his attitude. The pre-sentence report is ambivalent. The law enforcement officers involved indicate that he has no remorse.

The fact of the offence, that it occurred within three weeks of being released after serving eight months, I believe it was, of a 12-month sentence, would indicate that remorse is unknown to this accused; but the only indication in the pre-sentence report of some degree of remorse is a personal interview by the probation officer at the Yellowknife Correction Centre. It is hardly surprising that the accused, knowing full well what he was facing in terms at least that it would be a lengthy period of incarceration, would admit to remorse on his behalf. I am unable to accept his protestations of remorse at face value. That is not to say that I reject them; however, I believe that his protestations of remorse must be qualified with the character that has been evidenced in the past criminal record, and they must be qualified in that I have nothing before me of a concrete nature other than the verbal averments of the accused that there is remorse.

It is unclear to me if it is remorse at being caught, if it is remorse at having to go back to jail, or what kind it is.

There is nothing before me to indicate that the accused is a cleptomaniac or has some sort of psychological compulsion to commit this kind of an offence. There is

1 nothing before me that throws much light on his character
2 other than what can be concluded from his past criminal
3 activity and what is set out in the pre-sentence report
4 which I have already indicated is basically, in my view,
5 neutral.

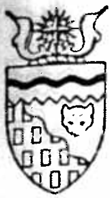
6 The pre-sentence report sets out in some
7 detail the accused's age and mode of life as much as it can
8 develop at age 20 having spent some two years in jail in
9 adulthood on break and enter convictions. There is no
10 recommendation in the pre-sentence report for particular
11 leniency or probation.

12 There are mitigating factors that have been
13 brought forth by defence counsel, and I do not think defence
14 counsel can be faulted in any way for bringing forward
15 every factor that is available to the accused, which has
16 been done.

17 The accused has pleaded guilty, although I
18 take it to be qualified to some degree by the fact that,
19 as I indicated, fingerprint evidence was available to
20 condemn him.

21 I am advised that there is some remorse, which
22 I am prepared to mind to a small degree. I am advised that
23 the accused feels badly about the offence. I am advised
24 that he has apparently very recently turned to religion to
25 assist him over these problems, and has become depressed
26 over this problem.

27 All those matters I can appreciate and take



into account when assessing sentence, and I am certain whatever sentence I impose, if those factors continue to operate, they will assist the accused in availing himself with the rehabilitation measures that are available through the different boards and tribunals that he will encounter.

All of these administrative tribunals and boards can assist the accused in his new found desire for rehabilitation.

I have already commented about the incidence of the crime in the jurisdiction that it is the most significant, and I would refer back to Morrissette and Overton as to arriving at a sentence in answer to the question, what is the purpose of the criminal justice system? The criminal justice system is to protect society, and ultimately society is protected by the rehabilitation of an accused. That is something that is within the realm of the accused. Only the accused can allow himself, as it were, to be rehabilitated. A change of lifestyle cannot be forced down someone's throat.

The accused in this instance has had ample warning. I refer to the decision of R. v. Wilson:

> "If a man who has been convicted shows himself unresponsive to leniency and persists in a life of crime, that is reason for giving him the proper and deserved sentence in a particular case. If, on the other hand, there are some merits, it may be that the court will treat him

> more leniently because he has shown himself in some way responsive to the warnings he has had."

I can find nothing before me that can show Mr. Napayok has been responsive to the warnings, the ample warnings, that he has received. Again quoting further down, and which I respectfully adopt as my own:

> "Bearing in mind the fact that the appellant had disregarded warnings and was, therefore, entitled to no particular leniency..."

I think it is clear Mr. Napayok has ignored all warnings that have been placed before him, in my view the most important factor in sentencing Mr. Napayok on the facts of this case.

I am not sentencing him, and I make it abundantly clear, on his record. He has paid for his past transgressions; but the governing rule must be deterrence, and I would like to quote from a decision of the Alberta Supreme Court Appellate Division in R. v. Doyle where the court referred to the case of R. v. Lehrmann 61 W.W.R. at page 625, in speaking of deterrence, Justice of Appeal Allen stated:

> "The governing principle of deterrence is, within reason and within common sense, that the emotion of fear should be brought into play so that the offender may be made afraid to offend again and also so that others who may have contemplated offending will be restrained by the same controlling emotion. Society must be reasonably assured that the punishment meted out to one will not actually encourage others, and when some form of crime has become widespread the element of deterrence must look more to the restraining of others than to the actual offender before the Court."

In dealing with this particular offender with respect to rehabilitation, I am content to adopt the words of the Quebec Superior Court in R. v. Levesque and to leave the matter of rehabilitation to the tribunals and boards that are left to that end. Rehabilitation is playing virtually no part in my sentence today.

Taking all that into account on Mr. Napayok's behalf, I believe the time has been reached in this man's life that the only way society can be protected from him is to take him out of circulation for an extended period of time. The criminal activity that he has chosen to embark upon has no doubt cost society untold dollars and caused a lot of difficulty in the very small community of Rankin Inlet.

I want to make it abundantly clear to Mr. Napayok and anyone else who contemplates continually committing break and enter offences that they contemplate or remember for a moment that in terms of sentencing, a line is going to be drawn, and the courts at some point and society will say enough is enough.

Mr. Napayok has crossed that line. Mr. Napayok, would you stand please. On this matter, I sentence you to two years in a Federal Penitentiary.

Certified a correct transcript

Catherine Metz
Court Reporter