

Appeal from the Sentence of
His Worship Magistrate M.M. de Weerd

In the matter between:

HER MAJESTY THE QUEEN

Respondent

and

James George KEARNEY

Appellant

REASONS FOR JUDGMENT Of The Honourable
Mr. Justice W.G. Morrow given at
Yellowknife N.W.T. on the 17th of August
AD 1971.

O.J.T. Troy Esq. Q.C. on behalf of the Respondent.

The Appellant in person, not represented by Counsel.

The Court:

I am always reluctant to interfere with the sentences of a magistrate, as they are practical men who travel around the country, and know the country, but in the past I have indicated by judgments on appeals such as this that I do not think that the driving privileges should be lightly taken away when there are other penalties to be applied.

In this particular case, and with some guidance

to Mr. Troy I hope, and with respect to the members of the Court of Appeal of Alberta, who, when they are wearing the other hat, are members of the Court of Appeal for The Northwest Territories, so it is with respect and deference I find that I cannot agree with the interpretation they put on the wording of the statutes. I construe "any period" to mean just that, any period, such as daylight hours, working hours, and so on. It seems eminently sound, particularly in the Northwest Territories where it is almost inevitable where a man is going to work, or driving a small half-ton truck, and has to go some distance, often in very cold weather for a substantial distance, where there are no street cars and buses and so on.

Accordingly, until I am directed otherwise by a higher court, I will follow the policy where the facts justify it, of giving terms where there is a suspension. In your case, Mr. Kearney, looking at the circumstances, and bearing in mind the attitude taken by Mr. Troy, I will allow the appeal to the extent of varying the terms of the suspension to this extent. There will be the suspension of your driving privileges for the period of two months, except during actual trips on your work. Now that puts you on the spot. You musn't start using your car for joy-riding or that type of thing. It will be purely work. Do you understand?

Mr. Kearney: Sir, I can use my own truck?

The Court: Yes, for work only. In all other respects you are prohibited from driving for two months.

Mr. Troy: Sir, he mentioned he used his truck from home to the grocery store for shopping.

The Court: No, he can hire a taxi. He has to hurt a bit. You understand I have only allowed the appeal to the extent you can drive at your work, but that is all.
