

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

ORAL REASONS FOR JUDGMENT OF HIS LORDSHIP THE HONOURABLE MR. JUSTICE WILLIAM G. MORROW, given on the 24th day of November, A.D., 1966, at the Town of Hay River, N.W.T.,

In the matter between:

HER MAJESTY THE QUEEN

Respondent

- and -

KENNETH VANDYKE

Appellant

MORROW, J.

I have heard the evidence and the remarks of Counsel on this appeal. I have noticed that on the various cases I have heard to date, as the new Territorial Court Judge, by way of appeal or otherwise, there seems to be a feeling that intoxication or inebriation is an excuse for committing crime. I think people should know it is not an excuse. Sometimes the Court may take it into consideration in moderating a sentence, but for someone to say, "I was drunk and pulled someone's hair, or grabbed someone by the throat without knowing it", is no excuse for what was done.

The type of section we are considering here in this appeal is for the purpose of attempting to prevent a more serious offence. It is quite true nothing more serious happened, but it might have, and this is why the criminal code has this type of section. I see nothing in the evidence here to make me, sitting as a court

MR. JUSTICE W. MORROW
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of Appeal, consider that the Justice of the Peace had erred in the penalty that he provided.

I think it should be made clear that ^{or} ~~as~~ a new trial, *de novo* I can consider the question of giving a gaol term ^{in addition} plus or in lieu of a fine. Under the circumstances, however, I am going to fine this man \$300.00 and costs as fixed in the lower Court, and in default of payment ninety days in gaol. If the fine has not already been paid that was directed by the Justice of the Peace, I am giving the Appellant fourteen days in which to pay it.

Now, I am dismissing, or allowing, I suppose would be a better way of saying it, the Appeal to the extent that the direction about fire-fighting may have been included as a part of the sentence, and because of this, if there has been a deposit of costs as part of this Appeal, those costs will be returned, and there will be no costs of this Appeal. Is that all?

Defence counsel
Mr. Purdy: This fine has been paid.

The Court: Any other direction required then?

A. No, Sir.

The Court: If this man had followed the direction and gone out to fight fires to help this community, it ^{might} have weighed quite a bit in his favour.

Defence counsel
Mr. Purdy: It was a matter of holding his job at the Hotel.

The Court: If the Hotel had been on fire they would have expected other people to come and help.
