

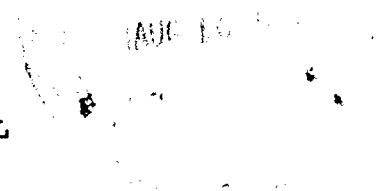
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

ROBERT ABEL



Transcript of the Submissions on Sentence and Reasons for Sentence of the The Honourable Judge R. M Bourassa, sitting at Yellowknife, in the Northwest Territories, on June 9th, A.D., 1995.

APPEARANCES:

MS. U. ARVANETES

On behalf of the Crown

MS. S. KAY

On behalf of the Defence

1 THE COURT: On sentence then, globally.

2 MS. ARVANETES: Sir, a criminal record is alleged.

3 MS. KAY: The record as alleged is admitted,
4 sir.

5 THE COURT: Exhibit S-1.

6 EXHIBIT S-1: ACCUSED'S CRIMINAL RECORD

7 MS. ARVANETES: I attach a certified copy of the
8 probation order that I was speaking of, it wasn't
9 included on the record so I have just written it in.

10 Sir, Mr. Abel is 32 years old and has an extensive
11 record dating back to 1979. By my count he shows some
12 14 convictions and 22 appearances before the court.
13 The offences occurring primarily in Yellowknife. The
14 convictions run the gamut from property offences to
15 offences against the administration of justice to
16 offences of violence.

17 Mr. Abel has also served some lengthy periods of
18 custody in recent years. He received 30 months in
19 1990 for robbery and 14 months in 1992 for assault
20 causing bodily harm. His most recent convictions were
21 the July 1994 conviction some 11 months ago. At that
22 time he was sentenced to 8 months of custody. So even
23 considering early release Mr. Abel was only out of
24 custody for a short period of time before he committed
25 the March theft and then the April assault.

26 Sir, with respect to the theft it was fairly
27 blatant though the accused did try to hide the food

1 bags to presumably make the staff think that the
2 groceries had already been purchased and bagged for
3 him. I would note that what was stolen, as you heard
4 sir, was some very nice cuts of meat - he wasn't
5 taking hot dogs, it was a value of some \$230.

6 With respect to the assault charge, I would note
7 as aggravating factors his relationship to his uncle,
8 the victim, as well as Mr. Fatte's age is 66 years
9 old. There is not much this gentleman could have done
10 to protect himself against an unprovoked, totally
11 unexpected and armed attack.

12 Aggravating to this also is the injuries that
13 Mr. Fatte suffered. The pain and the bruising on his
14 side and back lasted for at least two weeks. Mr. Abel
15 is obviously a violent person who has little control
16 of himself, especially when he is drinking.

17 Concerning his whole record, sir, individual
18 deterrence is not very effective against Mr. Abel.
19 The primary sentencing goal today, sir, would be that
20 of general deterrence and protecting the public. The
21 Crown would ask for a lengthy period of custody for
22 the assault with a weapon and the probation breach.
23 We would ask for a short period of custody with
24 respect to the theft charge; considering his record
25 he's already served time for theft under one thousand
26 dollars.

27 Mr. Abel has been in remand custody since April

1 25th where he was detained after a show cause.

2 Those are my submissions, sir.

3 THE COURT: Thank you. Ms. Kay?

4 MS. KAY: Sir, as you have heard, Mr. Abel is 32,
5 he considers Snowdrift home. He advises me that
6 during the time that he is there he does enjoy being
7 on the land and advises me that prior to being
8 remanded it had been his home and, had he been be able
9 to do so, he would return to Lutselke in order to do
10 some spring trapping.

11 Sir, there is an extensive record before you, and
12 in my discussions with Mr. Abel he has indicated that
13 in his view what some of the problem is that he lacks
14 the tools necessary to make it and as as a result
15 finds himself getting into alcohol and finds himself
16 back once again before the court.

17 Sir, as the Crown has pointed out, he has been in
18 remand since April 25, which by my count is 35 days,
19 which I would ask you to take into consideration in
20 dispensing sentence.

21 Those are my submissions.

22 THE COURT: I have to sentence the accused for
23 assault with a weapon, a charge of theft under five
24 thousand dollars and a charge of breach of probation.

25 The accused has a terrible criminal record
26 consisting of approximately 14 criminal convictions.
27 He has been in jail almost every single year since

1 1980 on numerous property offences, narcotics offences
2 and offences against process. But more disturbingly,
3 there are many offences of violence in many of them.
4 Offences of robbery, assault, uttering threats,
5 assault causing bodily harm, two more robberies.

6 The evidence before me on the theft was that he
7 threatened to hurt Mr. Sangris, who was totally
8 innocently wrapped up or involved in Mr. Abel's
9 conduct. The attack on this old man is
10 incomprehensible. There is absolutely no reason, one
11 couldn't even grace it, one couldn't even preface it
12 with the most modest of feeble excuses. Abel smashed
13 his way in, forced his way in, and picked up a piece
14 of wood and attacked an old man 66 years old.

15 The accused is a chronic alcoholic. There are
16 alcoholics and there are alcoholics, I suppose. There
17 are a number who may be a nuisance but are basically
18 harmless. One may steal a package of meat, a few
19 dollars or a package of cigarettes. Then there is
20 Mr. Abel. He is hurting people. In my respectful
21 view, it's only a matter of time before he kills
22 someone, rapes someone, causes someone really gross
23 bodily harm. The man is a bully; he is out of
24 control.

25 What possible reason could there be to attack a
26 66 year old man with a club? - to get his liquor
27 perhaps? I don't know. But there is no reason good

1 enough.

2 There is nothing before me that would indicate
3 that there is any possibility of rehabilitation. The
4 desire to go back home and go trapping is a fantasy.
5 There is nothing in mitigation in my respectful view.
6 I am deeply concerned about the violence and this
7 man's inability to control himself, and also his
8 ability to use his obvious reputation for violence to
9 intimidate.

10 The theft was a blatant exploitation of one
11 individual, and he was inescapably caught. He then
12 comes to court and tries to wiggle out of it by lying.
13 I am not taking that in aggravation, but it's pathetic
14 that Mr. Abel should think so little of the system; no
15 one is fooled.

16 In terms of sentence I have to take totality into
17 account and I do. With respect to the pre-trial
18 custody, Mr. Abel was in custody because he had a show
19 cause hearing and was unable to obtain his release.
20 He was awaiting trial on the charge of assault causing
21 bodily harm and he got involved in the theft. He was
22 kept in custody for the protection and safety of the
23 public undoubtedly. That's his problem in the sense
24 that he is in jail because he was unable to control
25 himself. While I acknowledge he has spent some time
26 in custody and that should reflect on the sentence, it
27 is going to be reflected in a modest way.

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I have to take into account totality and I do.
In my view the Court of Appeal of Ontario is correct
when they say that at one stage in a man's criminal
career the rehabilitation would best be left to the
administrative boards and tribunals that are set up
within the correctional system to take care of that.
I cannot see rehabilitation as a principle of my
sentence, in my view my sentence has to be deterrence;
the man is frightening. In my view public safety
demands that he be locked up. That is a terrible
thing to say about someone, but on all of the evidence
before me I have no other choice. He is a danger.

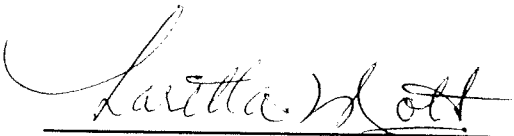
Stand up Mr. Abel. On the charge of assault
causing bodily harm - two years, four months in a
federal penitentiary.

On the charge of breach of probation - two
months, concurrent.

On the charge of theft - two months consecutive.

(AT WHICH TIME THIS MATTER WAS CONCLUDED)

Certified correct,



Loretta Mott, Court Reporter