

# ORIGINAL

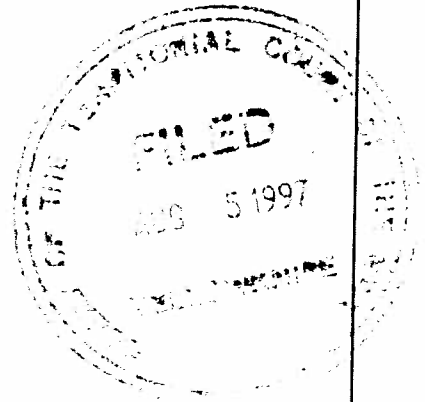
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JEANNIE FLORENCE GAGNON




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Transcript of the Sentencing Hearing held before The Honourable Chief Judge R.W. Halifax, sitting in Yellowknife, in the Northwest Territories, on Thursday, the 19th day of June, A.D., 1997.

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APPEARANCES:

Ms. M. Nightingale:	Counsel for the Crown
Ms. S.A.E. Kay:	Counsel for the Defence

1 THE CLERK: Jeannie Florence Gagnon.

2 THE COURT: This is a matter for sentencing.

3 It has been adjourned. You will have to bear with me.  
4 It is all in my own handwriting and sometimes I do not  
5 read it very well.

6 This is a matter for sentencing of the accused on  
7 a charge of theft over a value of \$5000 contrary to  
8 Section 334(a) of the Criminal Code.

9 Basically, the circumstances are that the accused,  
10 as part of her employment, entered into a lease  
11 purchase arrangement for a house with her employer at  
12 the rate of \$2000 per month. If the accused exercised  
13 the option to purchase, a certain amount of the lease  
14 payments would be applied to the purchase price  
15 together with a deposit.

16 The accused, as the accounts receivable clerk for  
17 the business, was responsible for receiving funds and  
18 posting the same to the accounts of customers.  
19 Further, the accused was responsible for depositing the  
20 monthly lease payment and keeping the account for this  
21 up to date.

22 Due to financial hardship, the accused diverted  
23 funds from the other customers' accounts to the lease  
24 account, which shortages were discovered by another  
25 person who was carrying out these duties in the  
26 accused's absence. The employer then had to have an  
27 audit done to ascertain the extent of funds diverted

1 and brought in the RCM Police to investigate.

2 The accused was eventually interviewed by the  
3 police and fully admitted and had explained what she  
4 had done. There is an indication she was very  
5 remorseful and was cooperative with the police. The  
6 total amount diverted was \$7,507.58 of which \$6000 had  
7 been repaid at the time of the hearing. The accused  
8 was an eight-year employee of the business.

9 She is married with four children of her own and  
10 two other children for which she has responsibility.  
11 It is a first offence, and a guilty plea was entered  
12 soon after disclosure was provided. The accused's  
13 income from her employment was around \$40,000 a year,  
14 and her husband was earning over 100,000 a year. As a  
15 result of her actions, she has lost that employment.  
16 The accused seems to be the main person meeting the  
17 day-to-day needs of her family as her husband works  
18 seven days a week.

19 The reason behind the accused's actions seems to  
20 be that she was trying to help other members of the  
21 extended family which resulted in no money being left  
22 to cover the lease payments. It is this good samaritan  
23 approach to life that got her into this trouble. She  
24 expected to be able to pay the money back in the  
25 future; however, she was caught before that could be  
26 done.

27 The accused is obviously remorseful and sorry for

1 her actions which are just the opposite to what she  
2 demands of her own children. Her family has remained  
3 supportive of her throughout this difficult period.

4 It should be noted that there was more than one  
5 incident of rerouting customers' payments to the lease  
6 account. Although the process was not very  
7 sophisticated, there was some pre-planning and was  
8 continued on more than one occasion. This is a breach  
9 of trust situation being a theft from an employer.

10 Generally, the main principle of sentencing in  
11 this case is deterrence, not only deterrence of this  
12 accused but also general deterrence of the public at  
13 large. The sentence must be such that the message is  
14 clear that theft from your employer is serious. These  
15 types of offences occur to a large extent because the  
16 person is trusted by the employer and is therefore in a  
17 position to be able to commit the offence. This type  
18 of trust must be maintained to allow businesses to  
19 operate at a reasonable footing, and it is very  
20 difficult to protect against thefts from within by  
21 trusted employees. It is for that reason that jail  
22 terms tend to be the norm in disposing of cases of this  
23 nature.

24 The Crown has asked for a term of imprisonment and  
25 takes the position that a conditional sentence in these  
26 circumstances is not sufficient to meet the deterrence  
27 aspect of sentencing. Counsel for the accused has

1 argued for a conditional sentencing or alternatively,  
2 for an intermittent sentence which, of course, then  
3 presupposes a sentence of 90 days or less.

4 There are a number of cases which were provided to  
5 the Court regarding sentencing and breach of trust  
6 cases and particularly conditional sentencing in such  
7 cases. There are a number of cases from this  
8 jurisdiction which deal with this type of case and the  
9 principles of sentencing including R. v. Johnson,  
10 R. v. Wyness, R. v. Doyle, and R. v. Rogers. All of  
11 these cases have set the standard that generally a term  
12 of imprisonment is imposed except in exceptional  
13 cases. This case is not exceptional in its  
14 circumstances. Basically, the accused was living  
15 beyond her means and diverted money from her employer  
16 for her own benefit to protect the lease purchase  
17 arrangement.

18 Most of the cases in this jurisdiction were before  
19 the conditional sentencing provisions were enacted in  
20 the Criminal Code. The Court must consider whether a  
21 conditional sentence is appropriate in these  
22 circumstances.

23 Now, Section 742.1 of the Criminal Code provides  
24 for conditional sentencing, and the provisions really  
25 basically come down at the end of the day to setting  
26 out three prerequisites for a conditional sentence.  
27 Namely, they are that there is no minimum term of

1 imprisonment which in this case, of course, there is  
2 not; that the sentence is less than two years; and  
3 thirdly, that the Court must be satisfied that the  
4 serving of the sentence in the community would not  
5 endanger the safety of the community.

6 If these prerequisites are met, the offender may  
7 be considered for a conditional sentence; however, this  
8 does not mean that the offender has an absolute  
9 entitlement to a conditional sentence. The sentencing  
10 judge must consider whether a conditional sentence is  
11 appropriate in all the circumstances of the specific  
12 case. This involves consideration of the principles  
13 and objectives of sentencing provided for in the  
14 Criminal Code and the case law.

15 The Criminal Code in Section 718.2 establishes  
16 that a breach of trust is an aggravating circumstance  
17 when considering an appropriate sentence; however, all  
18 the aggravating and mitigating components of the  
19 specific case and as set out in the Criminal Code must  
20 be considered.

21 In cases of this nature, the Courts have  
22 consistently indicated that deterrence is a very  
23 important objective, and I refer to R. v. Pierce and  
24 R. v. J.(W.). In most cases, deterrence of the  
25 offender is not as important as general deterrence as  
26 generally persons who have committed this type of  
27 offence, once caught, are not likely to commit further

1 offences; however, general deterrence is very important  
2 in that the general public and people who may be of  
3 like mind as the accused realize there will be  
4 consequences for this type of behaviour.

5 There must be a message that theft from an  
6 employer is serious in order to protect employers and  
7 others who must put people in positions of trust and  
8 authority. If the public arrives at the view that such  
9 offences are treated lightly and there is no real  
10 sanction, one would expect that the risk factor would  
11 be viewed as substantially reduced and people would be  
12 more inclined to take the chance of breaching that  
13 trust if they do not perceive any real consequence.

14 The Court must be mindful of the new approach to  
15 sentencing established by Parliament and not be a slave  
16 to the view that certain offences result in  
17 institutional incarceration. A conditional sentence is  
18 a sentence of imprisonment which sentence is served in  
19 the community under prescribed conditions set out in  
20 the conditional sentencing order.

21 The option of a conditional sentence should not be  
22 excluded for any particular type of offence where  
23 imprisonment is to be imposed as Parliament has not set  
24 such a limit, and for the Court to do so would be to  
25 circumvent the conditional sentencing regime. Even in  
26 breach of trust situations where terms of institutional  
27 incarceration are generally imposed, the Court should

1 consider the new conditional sentencing option together  
2 with other possible dispositions in the circumstances  
3 of the case.

4 In the past, sentences other than imprisonment  
5 have been imposed for this type of case based on the  
6 particular circumstances, although this has been  
7 somewhat exceptional. In my view in the circumstances  
8 of this case, a term of imprisonment should be  
9 imposed. There are no exceptional circumstances that  
10 take this case out of the normal result for a breach of  
11 trust. Granted, the accused is a first offender, but  
12 previous good character is one of the reasons she was  
13 in the position of trust and able to commit the  
14 offence. The fact that she is suffering some  
15 embarrassment and has disappointed people close to her  
16 is also the norm for this type of case.

17 The good samaritan motive does not justify the  
18 accused's actions. One cannot justify this type of  
19 offence by laudable motives. The fact is that the  
20 accused and her husband had an income of over \$140,000  
21 per year and the fact that choices were made that put a  
22 financial burden on the family, regardless of what  
23 those choices were, does not change the situation. The  
24 Court cannot send the message that it is not serious or  
25 it is okay to steal from your employer if you have good  
26 motives or the fruits of the offence are put to good  
27 use.



1           Given that a term of imprisonment is to be  
2 imposed, the Court must then consider if a conditional  
3 sentence is appropriate. This is not a case where a  
4 minimum sentence is provided and, in my view, not one  
5 in which the sentence should be more than two years  
6 imprisonment. Therefore, the first two prerequisites  
7 of Section 742.1 have been met.

8           The last prerequisite is that the Court must  
9 consider and be satisfied that the serving of the  
10 sentence in the community will not endanger the safety  
11 of the community. The accused, being a first offender,  
12 was cooperative, is remorseful, and has repaid the  
13 majority of the funds. She has entered an early guilty  
14 plea which is an indication of accepting responsibility  
15 for her actions.

16           Obviously removing the accused from her family who  
17 depend on her very much in the normal course will have  
18 a devastating effect upon the accused. The  
19 rehabilitation process is already commenced, and  
20 institutional incarceration will do nothing but retard  
21 that process, in my view. It is very unlikely that  
22 this accused will reoffend in the future as normally  
23 people in her position seldom reoffend. I get the  
24 impression that the accused has a deep sense of  
25 disappointment in herself for her behaviour which is  
26 opposite to the principles she has instilled in her  
27 children.

1 I am satisfied that the safety of the community is  
2 not endangered in the sense that this offender is not  
3 likely to reoffend.

4 I am satisfied that in all the circumstances, this  
5 is a case where a conditional sentence is appropriate  
6 and consistent with the fundamental purposes and  
7 principles of sentencing as set out in Section 718 to  
8 718.2 of the Criminal Code.

9 It should be made very clear that a conditional  
10 sentence is a sentence of imprisonment which is being  
11 served in the community under strict conditions. If  
12 the offender breaches any of the terms of the  
13 conditional sentence order, she is subject to serving  
14 the balance of the sentence in jail. Further, the  
15 conditions included in the conditional sentence can be  
16 very onerous and restrictive in themselves.

17 In conclusion, it will be a conditional sentence  
18 order for a term of nine months. The statutory  
19 conditions provided for in Section 742.3 are to be  
20 included, which are that the accused will keep of peace  
21 and be of good behaviour. Secondly, the accused will  
22 appear before the Court when required to do so.  
23 Thirdly, the accused will report to a supervisor within  
24 seven days from today and thereafter as directed by the  
25 supervisor but at least twice per month.

26 Further, there will be the additional conditions:  
27 That the accused carry out 100 hours of community

1 service work within six months; that the accused remain  
2 in her residence from 7 p.m. to 7 a.m. daily except for  
3 the purposes of employment or carrying out the  
4 community service ordered above for a period of four  
5 months from today; and finally, that the accused shall  
6 carry with her a copy of this conditional sentence  
7 order and produce it on request for identification by a  
8 peace officer.

9 You should understand, Ms. Gagnon, any breach of  
10 those conditions can subject you to spending the  
11 balance of the term in jail. I think you should also  
12 recognize that this is, in my understanding, the first  
13 conditional sentence that has been given in this  
14 jurisdiction for a breach of trust so to some degree,  
15 you carry the load for the future on your shoulders  
16 here. If it does not work, judges may be less inclined  
17 in the future giving this type of order. I do not wish  
18 to load that on you, but I think you should recognize  
19 that this is the first time, to my knowledge, that this  
20 has happened. There will be a conditional order  
21 produced. Just have a chair in the courtroom.

22 MS. NIGHTINGALE: Sir, I wonder if the Court would  
23 address the remaining money outstanding.

24 THE COURT: Yes. That is the other one thing  
25 I wanted to consider.

26 MS. NIGHTINGALE: Apparently, there --

27 THE COURT: I wanted to know, has anything

1 further been paid over the \$6000?

2 MS. KAY: No, there hasn't, Sir.

3 THE COURT: That leaves us then \$1507.58.

4 There will be a further condition of the order. How  
5 long do you think you are going to need, Ms. Gagnon, to  
6 pay the balance at 1507.58?

7 MS. KAY: Sir, in the range of six months.  
8 She is agreeable if the Court wishes a specific amount  
9 to be paid each month, though.

10 THE COURT: What is the Crown's position?

11 MS. NIGHTINGALE: That's fine, Sir.

12 THE COURT: Okay. There will be one further  
13 condition then that she will make restitution to the  
14 Clerk of the Court in the sum of \$1,507.58 for  
15 distribution to Robinsons' Trucking Limited within six  
16 months from today. I would suggest to you, Ms. Gagnon,  
17 that you make the payments monthly so you do not wind  
18 up at the end of the six months not being able to do so  
19 because then you are leaving yourself open to going to  
20 jail for three months.

21 THE ACCUSED: It will be done.

22 THE COURT: Okay. That will be all.

23 MS. KAY: Thank you, Sir. Those are all of  
24 the matters I have before the Court this morning.

25 THE COURT: Very well. You will have your  
26 client wait and receive the copy of the conditional  
27 sentence order.

1 MS. KAY:

Yes.

2  
3 **ADJOURNED GENERALLY**

4  
5 Certified pursuant to Practice  
6 Direction #20 dated December 28, 1987.

7  
8 *Tara Taylor*-----

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10 Tara Taylor, CSR(A), Court Reporter

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