

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

MOSES KAROO

Transcript of the Oral Reasons for Sentence by The Honourable
Judge B.A. Bruser, at Yellowknife in the Northwest Territories,
on Friday, February 5th A.D., 1999.

APPEARANCES:

Ms. L. Colton: Counsel for the Crown
Ms. A. Davies: Counsel for the Accused

1 THE COURT: This offender is 27 years old. He
2 has pled guilty to nine serious Criminal Code
3 offences. They can be grouped into two categories:
4 those of the 22nd of November, 1998, and those of
5 November 28, 1998. All of the offences occurred, sir,
6 in your home community.

7 Counts 1, 2, 3, and 4 are the ones that the Court
8 heard about first. For this reason, I am approaching
9 them first in these reasons.

10 Count number 1 is a break, enter, and assault on
11 the manager of the Co-op, the break-in occurring at his
12 home. Count number 2 is the actual breaking into the
13 Co-Op because that's where you wanted to get into when
14 you invaded the home of the manager Raymond Jean.

15 Count number 3 is a break-in into the post office on
16 the same night. And Count number 4 is an attempted
17 robbery from the manager of the Co-Op while you were
18 armed with a hammer and a screwdriver.

19 The second group of offences from the earlier date
20 of November 22nd involves break-ins into various
21 businesses in your community, including a government
22 building and a hotel and the Planning Commission office
23 and the petroleum products business and Taluq Designs.

24 The Crown has said that the break-in into the home
25 of the manager of the Co-Op can be characterized as a
26 "home invasion". I have already remarked that what
27 you did was to invade his home. Therefore, as a matter

1 of fact, and law, it amounted to what can be
2 characterized as a home invasion. A home invasion
3 though is not a separate category of crime.

4 When I say that as a matter of fact and law it is
5 a home invasion, I am simply following the
6 characterization by the Alberta Court of Appeal that
7 said where certain things are present, it becomes a
8 more aggravating factor. In other words, it becomes a
9 more serious type of break-in.

10 The Court of Appeal of Alberta, in the judgment
11 referred to by both the Crown and the defence, sets out
12 the starting-point approach of eight years for a
13 break-in that has the factors of a home invasion as
14 aggravating features. In that sense, it's not a
15 separate crime but it's an aggravating type of
16 break-in.

17 The distinction is important lest this matter go
18 further. I have kept that distinction in mind in
19 following the McDonnell line of reasoning from the
20 Supreme Court of Canada.

21 The circumstances of what you did when you broke
22 into the home of the manager, I will not go over in as
23 much detail as they were read in earlier today, but
24 they involved your having the hammer and the
25 screwdriver, that we heard about in one the charges,
26 with you. It involved a threat to kill him. You
27 repeated the threat. It is apparent that you wanted to

1 use him to gain access to the Co-Op so that you could
2 there obtain money, presumably to fuel your need for
3 alcohol.

4 The effect on the victim has been profound. What
5 I mean is that it has had a major impact upon him.

6 In the pre-sentence report, there are indications,
7 that your lawyer, sir, has not challenged on your
8 behalf, to the effect that the victim now receives
9 flashbacks as to what happened. He thinks that he will
10 be "scared for life". He has acknowledged that you
11 apologized to him by letter. This is to your credit.
12 I have not overlooked it, Mr. Karoo.

13 The other charges from the 28th of November really
14 do nothing more than connect to your ongoing actions to
15 get into the Co-Op.

16 The Ontario Court of Justice (General Division) in
17 a case filed with this Court today, called Harriott,
18 has some interesting remarks regarding the sentencing
19 considerations that the Court might take.

20 At page 2, paragraph 6, the Judge had this to say:

21 "The system appears to be failing
22 our young people. Slaps on the
23 wrist in today's society could be
24 one cause of why our society
25 appears to be becoming more
26 violent. Obviously the previous
27 penalties given to the accused
have not deterred him from
escalating his criminal conduct.
However, the accused is in control
of his own destiny and,
unfortunately, he has failed to
learn anything from his previous
brushes with the law."

1 This last sentence seems to apply to you, sir.

2 There was a period when you behaved well from the
3 summer of 1993, approximately, to November 1998.
4 During that time, you were basically employed from time
5 to time and you took steps to improve your education
6 and generally lead a law-abiding life.

7 Then, with the suicides of some close friends and
8 with the compounded problems that you had been
9 harboring for many years from your youth, you received
10 a large shipment of liquor on November 20th, 1998,
11 began to drink, and the offences followed quickly in
12 time.

13 I return to the Harriott judgment at paragraph 7.
14 The Court said that it, "must come up with the
15 appropriate sentence realizing the horror of the crime
16 in invading the privacy of individual people in their
17 own homes, the violence with it". The rest of the
18 paragraph is not significant to what I have to deal
19 with.

20 We live in Canada. We are governed by the
21 Criminal Code of Canada, not the Criminal Code of
22 Taloyoak, not the Criminal Code of the Northwest
23 Territories. We live in a Canadian society made up of
24 a multi-cultural, pluralistic group of people. Home
25 invasions in some places in Canada are very common.

26 We have already discussed in exchanges between
27 counsel and myself this afternoon the prevalence of

1 home invasions, that is that type of break-in, in
2 Vancouver, British Columbia. It seems these days that
3 when we turn on the CBC or the BCTV news out of
4 Vancouver there is yet another home invasion being
5 broadcast. Sentences in Vancouver for that type of
6 crime will probably, when the criminals are caught, be
7 very severe. The maximum punishment available to the
8 Court for breaking and entering into a home is life.

9 In this jurisdiction, governed by the same law but
10 with different guidelines from time to time, home
11 invasions are not as common. I believe it would be a
12 mistake in law to single you out as a person committing
13 this type of crime and to give you an exemplary
14 sentence of many years in the penitentiary just to be a
15 signal to others not to do this. The focus cannot be
16 on that, but the Court still must not lose sight of the
17 need to discourage others who may be of like mind.

18 I do not say with these remarks that the home
19 invasion type of break and enter is rare here. It's
20 not. But it is not as common as in southern Canadian
21 cities.

22 For that offence and all of the others, I give you
23 credit for pleading guilty at the first opportunity to
24 do so. I believe you when you say that you are sorry
25 and your letter of apology to the victim of the first
26 charge is some evidence of this.

27 I have also taken into account the time in custody

1 and the fact that you are able to lead a law-abiding
2 life for lengthy periods of time when you set your mind
3 to it. These things are all in your favour.

4 The pre-sentence report material does, however,
5 signal to the Court a message that you have underlying
6 problems that you have known about since you were a
7 young person and that you have not yet taken
8 appropriate steps to get on top of. This causes the
9 Court some concern in arriving at a fit punishment.

10 For that offence, that is the first one, there
11 will be a period of imprisonment of three years. For
12 the other three offences of November 28th, there will
13 be, for Count 2, the break-in into the Co-Op, two years
14 concurrent. For Count 3, the break-in into the post
15 office, two years concurrent. And Count number 4, the
16 attempted robbery, there will be two years concurrent.
17 But the three-year period for the break-in into the
18 home will be consecutive to what I am about to sentence
19 you for arising from November 22nd.

20 Those matters are less serious than what happened
21 on the 28th of November when taking into account the
22 totality of the circumstances. On each one, there will
23 be one year imprisonment concurrent to each other,
24 being part of a spree on that date.

25 The total sentence then that the prison
26 authorities will be administering is one of four
27 years. This is about one year less than the range of

1 five years sought by Crown counsel. This takes into
2 account the several factors in your favour.

3 If I were to have sentenced you to five years
4 globally, then the sentence in my view would not have
5 given you ample credit for those things in your favour
6 and, in particular, the prompt guilty pleas and
7 cooperation with the authorities.

8 The defence urged the Court to take into account
9 the jump principle. This means that sentences should
10 not be too great a jump or leap over past sentences
11 which you received. Nevertheless, as I understand the
12 principle, there ought to be a big jump where it is
13 necessary to do so in order to protect the public
14 adequately, applying the principles and objectives of
15 sentencing, all of which I have taken into account.

16 For the attempted robbery and the break-in into
17 the home of Raymond Jean, there will be a firearm
18 prohibition order. I have not heard argument on this.
19 It is mandatory unless there is established by the
20 offender a basis for not making it. He does not own
21 any firearms. I am assuming therefore that there would
22 be no argument against making it.

23 I will give the defence one opportunity though now
24 to address that.

25 MS. DAVIES: Sir, I understand that Mr. Karoo
26 has no firearms in his possession. He does hunt on a
27 regular basis. And when he does that, he borrows

1 firearms from relatives.

2 THE COURT: How can he lawfully do that?

3 MS. DAVIES: I understand that he can't so
4 pursuant to a firearms prohibition -- to be honest, I
5 haven't canvassed that issue with my client. If I
6 could just have a brief moment to do so.

7 THE COURT: Yes.

8 MS. DAVIES: Sir, I am just having a look at the
9 recent amendments in that area which I do not have in
10 my Criminal Code.

11 THE COURT: If you have the 1999 edition -- do
12 you not have it?

13 MS. DAVIES: I do.

14 THE COURT: It's the shaded parts that have
15 been proclaimed in force effective, I think, December
16 1st.

17 MS. DAVIES: I have a Tremears Code and it
18 doesn't appear to be in that issue although --

19 THE COURT: Well, in any event, you have it in
20 Martin's --

21 MS. DAVIES: Yes, sir.

22 THE COURT: -- as given to you by Crown
23 counsel. I think Section 113 is now the exemption
24 section.

25 MS. DAVIES: Sir, in my submission, under
26 Section 113 I would ask you -- the Court to refrain
27 from making this order on the basis that my client

1 needs a firearm in order to hunt to sustain himself and
2 his family. I have given some submissions to the
3 effect that he does hunt quite regularly, that he spent
4 a full year out on the land hunting at one point. If
5 you wish, sir, I can call evidence on that issue. I
6 will leave that up to you, sir.

7 THE COURT: Well, no, it's not the Court that's
8 going to decide if evidence will be led. It's you.

9 MS. DAVIES: Sir, I suppose what I am saying, if
10 you require further evidence along those lines, I am
11 quite willing to call my client to establish that.

12 THE COURT: I am prepared to accept what you
13 say but if you want to call evidence, you may do so. I
14 am not insisting that you call evidence to back up what
15 you have said.

16 MS. COLTON: If it assists, sir, I don't
17 challenge that Mr. Karoo hunts regularly or that that's
18 part of his background. I would -- my understanding of
19 the way that Section 113 works with Section 109, which
20 is the mandatory prohibition order, is that it's a
21 mandatory order, the order is made. Section 113 allows
22 an exemption in that if Mr. Karoo wishes to engage in
23 sustenance hunting, he can apply for a firearms
24 acquisition certificate for the limited purpose of
25 sustenance hunting. So it is not a case that the
26 prohibition is not made but it is made but with a
27 built-in exception. That's how -- it hasn't come up

1 that often but I know it has been dealt with in cases
2 at least in the Supreme Court recently and that, the
3 order was made under Section 109 with an exception
4 under 113.

5 THE COURT: It is an application to a competent
6 authority, it is not an application to the Court. Is
7 there any authority left in the Court to make that sort
8 of exception?

9 MS. DAVIES: I believe that under subsection (4)
10 it says that for greater certainty an order under
11 subsection (1) may be made during proceedings for an
12 order under subsection 109(1), 110, and then it goes
13 on.

14 MS. COLTON: I do think that the Court
15 constitutes a competent authority.

16 MS. DAVIES: It defines competent authority in
17 subsection (5) as meaning a competent authority that
18 may or has jurisdiction to make the prohibition order
19 so I would submit that the Court would have
20 jurisdiction.

21 THE COURT: And subsection (4) appears to cover
22 it clearly.

23 There will be a firearm prohibition order. The
24 accused is a danger to people and to property when he
25 is drinking. He has a long way to go, is the sense
26 that I have from the material before the Court, before
27 he can be safely in possession of firearms. The

1 circumstances of what he did in November 1998 are, as I
2 have already said, alarming and serious. As well, he
3 has an entry on the record from when he was a youth for
4 possession of a weapon. We do not know if it was a
5 firearm. The claim that he hunts is one that I accept,
6 I do not require evidence to be heard in that regard.
7 But balancing his desire to hunt against the danger
8 that he poses to the community, the balance has to be
9 in favour of public protection. Accordingly, I make
10 it. I make no order directing that he surrender any
11 firearms, ammunition, or explosives because he
12 apparently does not have anything of that sort in his
13 possession. The order will begin today and end ten
14 years after his release from imprisonment. I believe
15 the way that the legislation is worded is that it is
16 open to him at some later date to apply to have this
17 lifted. Does the Crown interpret it this way? It
18 makes no difference to the order that I am making but
19 it might give the accused some hope for the future.

20 MS. COLTON: I think that's right, sir.

21 Competent authority includes the Court but would also
22 include the firearms officer or Territorial Court at a
23 future time.

24 THE COURT: I think 113(1) would apply, where a
25 person who is a person against whom a prohibition order
26 is made, so he having an order made against him, could
27 apply to a competent authority at some later date.

1 MS. COLTON: Yes, that's the way that I read
2 that as well, sir.

3 THE COURT: I see no point to any order of
4 restitution. There is no reasonable prospect, given
5 the sentence of today, of this being paid in any
6 realistic time period.

7 Does the Crown have anything further?

8 MS. COLTON: No, sir.

9 THE COURT: Anything more from the defence?

10 MS. DAVIES: No, sir.

11 (AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)

12 Certified pursuant to Practice
13 Direction #20 dated December 28, 1987.

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17 _____
18 Lois Hewitt,
19 Court Reporter
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