

T-0001-CR-2003001463

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

HANK MARK LAFFERTY



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Transcript of the Oral Reasons for Sentence by The Honourable Chief Judge R.M. Bourassa, at Yellowknife, in the Northwest Territories, on January 30th, A.D. 2004.

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APPEARANCES:

Mr. P. Falvo: Counsel for the Crown  
Mr. G. Watt: Counsel for the Accused

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Charge under s. 259(4) Criminal Code of Canada

1 THE COURT: I have to sentence the accused for  
2 the straightforward charge for which he was convicted  
3 of driving while disqualified or prohibited. The  
4 accused has a long criminal record, three pages long,  
5 comprising almost every offence in the Criminal Code,  
6 it seems, and he has been in and out of jail since  
7 1982. I am told that he has what is commonly called a  
8 drug problem and an alcohol problem. But be that as it  
9 may, how much longer are we to expect of society to  
10 support this man's drug and alcohol problem?

11 He is driving while disqualified. He has four  
12 convictions for drinking and driving offences. He has  
13 numerous convictions for failure to comply with court  
14 orders, which is probably more germane.

15 The Court is trying to protect the public from  
16 this man who has a drug and alcohol problem by keeping  
17 him off the road, and he refuses to comply. His  
18 refusal to comply with the court order in terms of not  
19 driving is consistent with his refusal to comply with  
20 recognizances, probation, undertakings and a variety of  
21 court orders in the past; possession of firearms while  
22 prohibited. There is no control of this man.

23 What is the Court or the law to say to the public,  
24 perhaps someone who may be injured as a result of his  
25 driving in the future?

26 In my view, at this stage the Court's primary  
27 concern has to be the public and protection of the

1 public. I am not under any illusions that anything  
2 this Court does today is going to have the slightest  
3 impact on the accused in terms of modifying his  
4 behaviour. All the Court can do is underline two  
5 things: One, that failure to comply with court orders  
6 in this situation will be responded to with a deterrent  
7 sentence. Secondly, that as far as the Court can in  
8 law the public will be protected from people who refuse  
9 to comply with court orders designed to protect the  
10 public.

11 With respect to the pre-trial custody, the accused  
12 was charged on the 27th of May, 2003. He wasn't in  
13 custody at that time. The accused appeared with  
14 counsel in June and July, the 29th, a month later for  
15 plea peremptory. On August 19th a plea was entered.  
16 The matter was adjourned for trial. The date arranged  
17 by Crown and defence that was agreed upon, and  
18 apparently the accused was not in custody at this time,  
19 was October 8th.

20 The trial was held. The accused was not present  
21 and complications arose, was not present in the  
22 courtroom. Ms. Engley, counsel for the accused, was  
23 required by the Court to remain as friend of the Court  
24 and protect Mr. Lafferty's interests as best she could  
25 and subsequent to the trial was removed as counsel of  
26 record. A warrant was issued for the accused.  
27 Subsequent, apparently, to that date he is facing other

1 charges as a result of which he was arrested. He has  
2 been in custody since, I take it, October,  
3 approximately.

4 I am asked to take that into account by a factor  
5 of two to one. Approximately six months in custody,  
6 according to that mathematical calculation, would be 12  
7 months. The most the Court can impose in this case is  
8 six. The Court owes the accused six months, as it  
9 were. It is urged on me to apply a factor of one and a  
10 half or two to reflect the pre-trial custody. The  
11 accused is facing trial again in March and the same  
12 arguments will, of course, be made. They are  
13 responsible arguments. The net result becomes  
14 bizarre.

15 In any event, I don't question the principle or  
16 argue with the principle that his time in custody is to  
17 be taken into account. However, there is another  
18 principle that the reason why a person is in custody is  
19 also to be taken into account, and apparently the  
20 accused committed or is alleged to have committed  
21 further offences subsequent to his release.

22 It is unclear to me whether or not the accused  
23 applied for and was denied bail or whether he just  
24 waived his right to a bail hearing. In either case, it  
25 is clear from the accused's criminal record that with  
26 the numerous convictions for failure to comply with  
27 court orders that release on a bail hearing is a highly

1           problematic issue for this man, and that is the natural  
2           consequence of his criminal history. So, yes, I take  
3           into account he has spent a lengthy period of time in  
4           custody, but mitigating that calculation are the  
5           reasons why he has been in custody.

6           I, again, in closing go back to the two points  
7           that this Court has to take into account in imposing  
8           sentence, the goals, the two goals the Court has to  
9           have.

10           Stand up, Mr. Lafferty. Is there anything you  
11           want to say?

12           THE ACCUSED:                   No, Your Honour.

13           THE COURT:                    Four months in jail, three years  
14           prohibited from driving.

15           **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

16   Certified to be a true and accurate  
17   transcript pursuant to Rules 723  
18   and 724 of the Supreme Court Rules.

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20   \_\_\_\_\_  
21   Jill MacDonal, CSR(A), RPR  
22   Court Reporter

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