

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

O. N. E.

Transcript of the Oral Reasons for Decision on an Amendment
Application by The Honourable Judge R.D. Gorin, sitting in
Hay River, in the Northwest Territories, on the 30th day
of March, A.D., 2006.

APPEARANCES:

Mr. B. Gaunt:	Counsel for the Crown
Mr. M. Hansen:	Counsel for the Young Person

1 THE COURT: This is my decision on the
2 Crown's application to amend a Youth Justice
3 Court Information which contains four counts,
4 each of which alleges an offence contrary to
5 Section 137 of the Youth Criminal Justice Act.

6 Approximately three weeks ago the accused
7 pleaded guilty to all four counts. The accused
8 now opposes the Crown's application.

9 First of all, as to the fact that the dates
10 charged straddle the six-month limitation period,
11 I agree with the Crown that the case law is quite
12 clear that under circumstances such as these, the
13 Information can and should be amended to cover
14 only those portions of the dates charged which
15 fall within the limitation period respecting
16 summary conviction matters.

17 However, as noted by Mr. Hansen, the charges
18 are still defective in that it is not alleged
19 that Mr. E. was, on the dates charged, a young
20 person, as that term is defined in the Youth
21 Criminal Justice Act. Moreover, all four counts
22 misstate the requisite elements of the offence in
23 their particulars; each count alleges that Mr. E.
24 failed to obey the probation order in question
25 "without reasonable excuse."

26 Section 137 of the Youth Criminal Justice
27 Act provides that the young person, or accused,

1 charged with a breach of a probation order made
2 by the Youth Justice Court must "wilfully fail or
3 refuse" to comply with such an order in order for
4 an offence to have occurred.

5 It is well established that wilfully failing
6 or refusing to do something is quite distinct
7 from failing to do something without reasonable
8 excuse. The elements of the offences with which
9 Mr. E. is charged are therefore incorrectly
10 particularized.

11 The Crown concedes that point and asks that
12 I make the necessary amendments in order to
13 properly set out the charges. Mr. Hansen, as
14 counsel for Mr. E., opposes the Crown's
15 application. He correctly, in my view, points
16 out that the problems which exist in respect to
17 Mr. E.'s charges, for some reason, often occur in
18 this jurisdiction, and one of his arguments, as I
19 understand it, is "enough is enough."

20 For some reason the individuals who are
21 framing charges contrary to Section 137 of the
22 Youth Criminal Justice Act are continually using
23 the wording "without reasonable excuse." That
24 wording would be correct if the accused were an
25 adult charged with a breach of probation contrary
26 to Section 733.1 of the Criminal Code.

27 As pointed out by Mr. Gaunt, Section

1 601(3)(b)(i) states:

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3 (3) Subject to this section, a court
4 shall, at any stage of the
5 proceedings, amend the indictment or
6 a count therein as may be necessary
7 where it appears

8 (b) that the indictment or a count
9 thereof

10 (i) fails to state or states
11 defectively anything that is
12 requisite to constitute the
13 offence.

14

15 In the present case it is clear that the
16 Information both fails to state and also states
17 defectively certain things which are necessary to
18 constitute the offence as charged.

19 In my view, within the provisions of
20 subsection 601(3)(b)(i), the word "shall"
21 requires that I make the amendments sought by the
22 Crown. This Court must follow the law, just as
23 everybody, including members of the public and
24 the police must follow the law.

25 If I were to refuse the Crown's application,
26 I have no doubt that a judge of the Supreme Court
27 would order a writ of mandamus requiring that I

1 allow the requested amendments, upon application,
2 of course, by the Crown. Clearly the Supreme
3 Court would be correct in making such an order.

4 Moreover, even if I had the discretion to
5 refuse the Crown's request, I would not do so
6 under the circumstances which are presently
7 before me. Mr. E. was represented by, in my
8 view, a very capable lawyer when he entered his
9 guilty pleas to all of the charges that I have
10 before me.

11 This Court undoubtedly entered into some
12 form of the necessary inquiry which is set out in
13 Section 606 of the Criminal Code before taking
14 the guilty pleas, and therefore there would have
15 been confirmation, that is the necessary
16 confirmation, that the guilty pleas taken were
17 voluntary and that Mr. E. knew that the guilty
18 pleas were admissions of all of the essential
19 elements of each offence he is currently charged
20 with.

21 I say this appreciating that both the
22 defence and Crown failed to bring the defects to
23 the Court's attention on the date that the pleas
24 were taken. That particular date was also
25 Mr. E.'s first appearance on all of these
26 charges.

27 However, as I have indicated, I am confident

1 that Mr. E.'s counsel knows what the elements of
2 the offence prohibited by Section 137 of the
3 Youth Criminal Justice Act are. I am satisfied
4 that she would have explained them to her client
5 and that she would not have represented him in
6 entering his guilty pleas if there were any doubt
7 that he was not prepared to admit the necessary
8 elements of each of the offences being charged.

9 I say this, as I have already indicated,
10 notwithstanding her failure to spot the defects
11 in the charges, and I am sure that both she and
12 the Crown would have brought these defects to the
13 Court's attention had they noticed them back on
14 March the 8th of this year.

15 In conclusion, because of the guilty pleas
16 and the fact that Mr. E. was represented by
17 capable counsel and the fact that the necessary
18 inquiry was undoubtedly made at the time that the
19 pleas were taken, I am of the view that Mr. E.
20 has not been misled or prejudiced by the defects
21 in the charges against him. As stated, I am of
22 the view that I have no option but to make the
23 requested amendments. However, for the reasons I
24 have provided, even if the requested amendments
25 were not mandatory, I would still make them under
26 all of the circumstances.

27 Now, Mr. Gaunt, on this circuit I have

1 already pointed out the problems the Court is
2 having with the way charges against young persons
3 are being drafted. These problems have been
4 present in a large number of charges against
5 other young persons during this court circuit.
6 The problem has been ongoing, and it has wasted a
7 significant amount of court time. So with
8 genuine respect, I would ask that the Crown take
9 the necessary steps in order to rectify the
10 problem, please.

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12
13 Certified to be a true and
14 accurate transcript, pursuant
15 to Rules 723 and 724 of the
16 Supreme Court Rules.

17 _____
18 Joel Bowker, CSR(A)
19 Court Reporter
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