

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

BROOKLYN JORDAN PALMANTIER

REASONS FOR SENTENCE

of the

HONOURABLE JUDGE B. E. SCHMALTZ

Heard at: Yellowknife, Northwest Territories
February 21, 26, 28 and March 6, 2014

Date of Decision: March 7, 2014

Counsel for the Crown: C. Bastedo
S. Boucher

Counsel for the Accused: M. Martin

(Sections 129 x 3, 264.1 and 88 of the *Criminal Code*)

R. v. Brooklyn PALMANTIER, 2014 NWTTC 10

Date: 03-07-14

File: T1 CR 2013 001458

T1 CR 2013 001615

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

BROOKLYN JORDAN PALMANTIER

I. INTRODUCTION

[1] Brooklyn Palmantier has pleaded guilty to three counts of resisting a peace officer, being correction officers at the North Slave Correctional Centre (NSCC), one count of uttering threats to cause death, again the victims being corrections officers, and one count of possession of a weapon for a purpose dangerous to the public peace. The charges arose from events on three different dates while Mr. Palmantier was serving a jail sentence at the North Slave Correctional Centre – August 18, September 9, and October 16, 2013.

II. FACTS

[2] On June 6, 2013, Brooklyn Palmantier was placed in custody at the NSCC. He was sentenced on October 2, 2013 to eight months, less 124 days credit for remand time. Between June 6, 2013, and February 26, 2014, Mr. Palmantier was held in the isolation cell for a total of 132 days; Mr. Palmantier was held in the isolation cell for 33 days straight between September 9 and October 11. On October 22, 2013, Mr. Palmantier was transferred to the Edmonton Institution, returning to NSCC on December 17.

[3] On August 18 last year at about 11:30 a.m. Mr. Palmantier was banging loudly on his cell door; when corrections officers opened the door Mr. Palmantier told them he was going to “fuck them up”, he was going to hit “one of you fucking goofs”.

[4] Mr. Palmantier was then moved to the maximum security area of the NSCC, the “isolation cell”; Mr. Palmantier continued being belligerent and aggressive, telling the officers that he was going to kill them all, resisting the officers, and refusing to do what they told him to do. Mr. Palmantier had placed some pop cans in a pillow case, which the corrections officers reasonably believed he would use as a weapon. Mr. Palmantier was pepper sprayed during this incident. At 10:35 that night, Mr. Palmantier was still yelling and belligerent while in the isolation cell; when Mr. Palmantier was given a “safety blanket” by one of the officers, Mr. Palmantier pointed a finger at an officer saying “I’m going to kill you.” Those facts relate to the charge of resisting a peace officer and the charge of uttering threats from August 18, 2013.

[5] On September 9, Brooklyn Palmantier again acted in a belligerent manner with corrections officers making comments about what he would do if he was found guilty and pushing a correction officer. When corrections officers tried to ensure this situation did not get out of control, Mr. Palmantier resisted the officers. Mr. Palmantier was pepper sprayed. Those facts relate to the resisting a peace officer charge from September 9, 2013.

[6] On October 16, during a search of Mr. Palmantier's cell, corrections officers found a razor blade with cardboard taped to it and a bolt. Having found these items which could potentially be used as weapons, the officers then attempted to search Mr. Palmantier which he resisted. Mr. Palmantier was pepper sprayed, and was not decontaminated for 45 minutes. Mr. Palmantier's clothes were cut off, and he was placed naked in the isolation cell, cuffed and shackled. Those facts relate to the possession of a weapon dangerous and the resisting a peace officer charges from October 16, 2013.

[7] Brooklyn Palmantier was held in the isolation cell until October 22, 2013, when he was transferred to the Edmonton Institution, which is a maximum security institution.

III. SUBMISSIONS ON SENTENCE

[8] Some serious allegations were made about the conditions that Mr. Palmantier was detained in from October 16 to 22, 2013. Therefore I asked that someone from the North Slave Correctional Centre attend to inform me of the conditions. Craig Spronken, the Deputy Warden at North Slave Correctional Centre, as well as Ed Patton and Brent Horn, Corrections Officers, testified on this

sentencing hearing. Brooklyn Palmantier and Corey Cardinal, another inmate that was also in an isolation cell during that time, also testified.

Detention conditions October 16 – 22, 2013

[9] The isolation cell is approximately 6' by 10', with a sink and a toilet. The water to the cell can be turned off, and Mr. Spronken testified that the water to the cell is turned off if the prisoner is threatening or assaultive. For the time that Mr. Palmantier was held there, the water was turned off. Mr. Palmantier was initially placed in the cell naked, hand cuffed, and shackled; there was no mattress in the cell, but Mr. Palmantier was given two "safety" blankets – one to lie on and one to use as a cover. Safety blankets are made from two pieces of vinyl with a "down type" material quilted between them. Mr. Spronken testified that policy was that 48 hours after Mr. Palmantier had been placed in the isolation cell, he would have been offered a shower; Mr. Spronken testified that he was told by staff that Mr. Palmantier was offered a shower, however there was no notation of such in the file. Mr. Palmantier testified that he was never offered a shower when he was held in isolation.

[10] Mr. Horn and Mr. Patton testified as to the routine or standard procedure when there are inmates in the isolation cells. Mr. Horn testified that he had a specific memory of offering Mr. Palmantier a shower on October 18, 19, 20, and 21. Mr. Horn also testified to other "routines" or practices that other evidence clearly established did not occur, e.g. Mr. Palmantier would have had a mattress, the type of clothing offered to Mr. Palmantier, that Mr. Palmantier was given a spoon with his meals. Mr. Spronken initially testified that Mr. Palmantier's mattress would have been returned to the cell after three days, but on checking

the file on an adjournment corrected himself advising that Mr. Palmantier's mattress was not returned to his cell while Mr. Palmantier was held in isolation from October 16 – 22. I do not accept Mr. Horn's evidence that he has an independent memory of offering Mr. Palmantier a shower on each of those four days – his evidence was mistaken with respect to other aspects of Mr. Palmantier's detention, and there is no reason that he would specifically remember this one detail and yet no others. And to be clear, I find it completely reasonable that one would not remember routine matters over four months after the fact. From all of the evidence I heard on this hearing, I am not satisfied that because something was routine or usually done, then it would have been done for Mr. Palmantier – the evidence shows that was not the case. I accept Mr. Palmantier's evidence that he was not allowed to have a shower during the period of October 16 – 22.

[11] While Mr. Palmantier was held in the isolation cell from October 16 – 22, the water to the cell was turned off, but if he asked for water, some water would be brought to him. Mr. Spronken testified that the reason the water is turned off in the cell is that an inmate could plug the sink with his hand or the toilet with his foot and thereby flood the cell. Mr. Palmantier was not provided with a toothbrush while he was held in the isolation cell. Mr. Palmantier was confined to the cell for at least 23 hours per day.

[12] Mr. Spronken testified that the mattress was taken out of the cell as it could be used as a barricade. Mr. Spronken also testified that though the mattresses have a vinyl cover that is "tear-proof", that "*anything* can be torn or the stitching can be undone." Initially Mr. Spronken testified that the mattress

was placed back in Mr. Palmantier's cell after three days, however upon checking the records during an adjournment, he determined that the mattress was not returned while Mr. Palmantier was in that cell. After a more extensive review of Mr. Palmantier's files at NSCC, Mr. Spronken determined that on September 17, 2013, Mr. Palmantier had ripped the cover off a mattress and used it to cover the security camera in a cell.

[13] Mr. Palmantier was not allowed cutlery of any kind while he was in the isolation cell, and therefore he was only given food that he could eat with his hands. Mr. Palmantier was not allowed any hot liquid while he was in the isolation cell. Mr. Spronken testified that Mr. Palmantier threw food out the opening in the cell door through which food was passed, and therefore Mr. Palmantier could have used a hot liquid as a weapon.

[14] Mr. Spronken testified that Mr. Palmantier's clothes were taken from him as he could have used his clothes as a weapon, explaining that clothes could be tied or bunched together and used as a "club" type weapon. Mr. Spronken testified that Mr. Palmantier was offered return of his clothing but refused it; after the review of Mr. Palmantier's NSCC files, Mr. Spronken testified that Mr. Palmantier was actually offered security clothing which he refused. The security clothing consists of a sleeveless gown-type garment that hangs to approximately knee level, and was made of the same quilted vinyl material that "safety blankets" were made from.

[15] Mr. Spronken testified that Mr. Palmantier was told on October 20, 2013, that he would be transferred to the Edmonton Institution on October 22, 2013. Mr. Spronken testified that after being told that, Mr. Palmantier's behaviour

improved. The mattress was not returned to the isolation cell when Mr. Palmantier's behaviour improved, and nor was Mr. Palmantier allowed to have his clothes back.

IV. SENTENCE

[16] I have to impose a sentence on Brooklyn Palmantier for three counts of resisting a peace officer, one count of uttering threats, and one count of possession of a weapon dangerous to the public peace.

[17] I want to begin by saying that I have no tolerance at all for Mr. Palmantier's behaviour while he was in custody. Such behaviour is completely unacceptable and intolerable. It could easily have led to far more serious consequences, it placed everybody in the North Slave Correctional Centre in danger; situations like this, like any one of these *three* situations, could so easily have escalated and resulted in far worse, even tragic consequences.

[18] Further, no one should have to put up with the abusive behaviour used by Mr. Palmantier towards the corrections officers. Being abused and threatened is not part of their job and Mr. Palmantier and others have to realize that the community will be protected from this sort of behaviour, and the community includes those people that work inside correctional facilities.

[19] As a community, we will not tolerate violence and threats being inflicted upon corrections officers who are simply doing their job. One reason that this type of behaviour has to be treated as even more serious when it is directed towards a corrections officer is that a corrections officer cannot simply walk away from the situation, but has to stay and fulfil his or her duties as a corrections

officer. *No one* should be subject to it, *no one* should have to tolerate it – and that has to be emphasized even more so when a person is in a situation where he or she cannot walk away from it, but *must* stay and deal with it. Abuse of corrections officers has to be denounced and deterred.

[20] I have reviewed *R. v. Davieau* (2008), 444 A.R. 56 (P.C.) submitted by the Crown and I agree with it. That case recognizes the importance of maintaining order in correctional facilities, the seriousness of criminal offences against both those who work in the facilities and those who are incarcerated, and also the risk of escalation to dangerous and even tragic situations when there is violence in a correctional centre.

[21] Having recognized the seriousness of the situation that Mr. Palmantier was responsible for, and the fact that his behaviour will not be tolerated, and there have to be consequences for it, I find it necessary to comment on the authority's reaction to his behaviour.

[22] I understand the need to diffuse the situation, to remove Mr. Palmantier from the population to prevent the situation from escalating, and the need to maintain order and safety in a penal institution. But I do not see how depriving someone of a mattress for seven days is a necessary or an appropriate response, and I do not accept the assertion that the mattress is made of a tear proof material, but "anything can be torn" justifies this. Further, it was not necessary to deprive Mr. Palmantier of a shower or a toothbrush, and there is no relationship between an inmate being threatening or assaultive and turning off the water in an inmate's cell.

[23] One of the goals of sentencing is rehabilitation. Rehabilitation should not be inconsistent with a jail sentence. When a person is deprived of liberty for committing a crime, *that* is the punishment – *being deprived of his or her liberty*. A person is sentenced to jail as punishment, not for punishment. In the vast majority of cases, when a person is sentenced to jail, he or she will be released from jail at a later date. I would expect that when a person is incarcerated it is realized that at some point that person is going to return to the community. What happens to him or her while incarcerated should if possible, prepare the person to successfully reintegrate back into the community, to become a productive member of the community and to make better choices.

[24] People do not want to lose their freedom, and that may be why a jail sentence has a deterrent effect. But as I said a jail sentence should not be inconsistent with rehabilitation. If a person is treated in such a way in jail that he or she is worse off coming out, then we cannot be surprised when the person ends up reoffending and back in jail. The comments in an article on Norwegian prisons that appeared in *The Guardian*, a British newspaper, are worth bearing in mind:

In 2007, 14 prisons in England and Wales had reconviction rates of more than 70%. At an average cost of 40,000 pounds a year for each prisoner, this amounts to *a huge investment in failure* – and a total *lack of consideration for potential future victims* of released prisoners¹. (my emphasis)

¹ *The Norwegian prison where inmates are treated like people*
<http://www.theguardian.com/society/2013/feb/25/Norwegian-prison-inmates-treated-like-people>

[25] Members of a community expect to be treated with respect and in turn treat each other with respect. When this mutual respect breaks down, one of the results may well be involvement of the criminal justice system – many crimes committed involve some sort of breach of, or lack of, respect, whether it is of a person, of property, or of the administration of justice. To coexist with each other there has to be at least a foundation of mutual respect.

[26] When a person is released from jail and is not prepared to acknowledge the necessity of mutual respect, he or she is likely to end up back in the criminal justice system. Mr. Palmantier will at some point be released back into the community. The less difference there is between life while incarcerated and life back in the community, then the easier the transition should be.

[27] I recognize that once a person is in the custody of corrections, I have no jurisdiction. But for what it is worth, when a person treated with a lack of respect, or subjected to inhumane conditions, such as being held in a cell with only two quilted vinyl blankets, and vinyl clothing, having to ask for water, or ask that the toilet be flushed, no toothbrush, not taken for a shower, no amenities at all, then that person will be likely to develop a lack of respect both for himself and for others. A person treated with respect, and fairly and humanely, can only be better prepared to successfully reintegrate back into the community.

[28] All of that being said, I must now impose a sentence on Mr. Palmantier for these offences. Sentencing should contribute to respect for the law and the maintenance of a just, peaceful and safe community; a sentence should be proportionate to the seriousness of the offence and the degree of responsibility of the offender.

[29] Mr. Palmantier has a terrible record for a young man – his record began in 2007 as a youth and has continued consistently up to now. He has been convicted of many related offences. Looking at Mr. Palmantier's record I do wonder how he is to be deterred from committing these types of offences – I have concerns that he is becoming institutionalized and if something does not get through to him that he may become incapable of existing in a just, peaceful and safe community.

[30] I have heard Mr. Palmantier testify and express himself during this hearing. It would be a waste of potential if Mr. Palmantier continues to behave the way he does, he is capable of so much more. I do hope that somehow Mr. Palmantier is both able to recognize how unacceptable his behaviour is and is also given access to the resources that he may need to change. But I also recognize that that will not happen without some effort on his part and insight on where he is headed. Without that he is destined to spend longer and longer periods of time in jail.

[31] Proportionality is a fundamental principle of sentencing – a sentence must be proportionate to the gravity or seriousness of the offence and the degree of responsibility of the offender. It is in considering the degree of responsibility of the offender, that I find the conditions of Mr. Palmantier's incarceration weigh heavily in my deliberation as to what is a fit sentence in this case. As I have already stated, Mr. Palmantier was held in the isolation cell for a total of 132 days between June 6 and February 26. On this hearing I heard evidence of the conditions of his detention from October 16 – 22; I do not know whether the same conditions existed during the other periods he was held in that cell.

Canadian Charter of Rights and Freedoms

[32] Mr. Palmantier's position is that the conditions in which he was held in custody resulted in a breach of his rights under sections 7, 9, 10(b) and 12 of the *Charter*.

Section 10(b)

[33] I do not find that Section 10(b) of the *Charter* has application in this case; that section provides the right to retain or instruct counsel without delay *upon arrest or detention*. There is no evidence that when Mr. Palmantier was arrested or detained, he was not given the right and the opportunity to contact counsel without delay.

Section 9

[34] With respect to the offences from August 18 and September 9, 2013, an Information was sworn on September 16, and Mr. Palmantier was served with a summons on October 5, 2013, requiring him to appear in Court on October 8, 2013. As Mr. Palmantier was a serving prisoner at that time a Removal Order was obtained for that appearance. With respect to the offences from October 16, 2013, an Information was sworn on October 21, and Mr. Palmantier was served with a summons on October 21, 2013, requiring him to appear in Court on October 22, 2013. As Mr. Palmantier was to appear in court on the August 18 and September 9 charges on October 22, no other process was taken out with respect to the October 16 charges. After the initial appearance on these charges a 'Form 19' (a remand warrant) issued for the next appearance, and this procedure continued on right up until Mr. Palmantier's appearance on March 6, 2013.

However Mr. Palmantier's release date on the sentence he was serving was December 26, 2013. Having been summonsed on the charges before the court, he was not detained on those charges. But for the Form 19s that continually issued to bring Mr. Palmantier back to court, Mr. Palmantier would have been released from custody on December 26, 2013. I believe it is common ground that Mr. Palmantier having been summonsed on the charges, there was no jurisdiction to issue a Form 19 and had a *habeas corpus* application been brought, it would have been successful.

[35] Section 9 of the *Charter* states that everyone has the right not to be arbitrarily detained or imprisoned. Mr. Palmantier's position is that he has been arbitrarily detained since December 26, 2013. The difficulty I have with this position is that whereas Mr. Palmantier *may* have been illegally detained, no *habeas corpus* application was ever taken out, and even *if* the Form 19s that continually issued were made without jurisdiction, Mr. Palmantier's position may be seen as a collateral attack. The correctional centre was always provided with proper documentation for Mr. Palmantier's detention, and the numerous remand warrants that kept Mr. Palmantier in custody were valid having never been declared otherwise. I recognize that Mr. Palmantier was not represented by counsel at all times, and that the legal procedures and perhaps subtleties may not be at all obvious to anyone but a lawyer, nevertheless, I cannot find that Mr. Palmantier's detention from December 26, 2013 to today, March 7, was arbitrary.

Section 7 and Section 12

[36] Mr. Palmantier submits that the conditions of his detention amounted to cruel and unusual punishment, and therefore a breach of his section 12 *Charter*

right, and as such, would also be a breach of his right not to be deprived of his liberty except in accordance with the principles of fundamental justice.

[37] Section 7 of the *Charter* states:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[38] Section 12 of the *Charter* states:

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

[39] The Correctional Service Canada's mission statement as found on its website² states:

The Correctional Service of Canada (CSC), as part of the criminal justice system and respecting the rule of law, contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.

[40] Section 2(2) of the *Corrections Act*, R.S.N.W.T. 1988, c.C-22, states:

(2) The purpose of the Corrections Service is the correction and treatment of offenders and the protection of the community by

...

(d) providing supervision, treatment and training of inmates *with a view to their rehabilitation*; and

(e) promoting and assisting programs designed *to prevent and diminish crime within a community*.

(my emphasis)

² <http://www.csc-scc.gc.ca>

[41] Also on Correctional Services of Canada's website³ there is reference to the United Nations *Standard Minimum Rules for the Treatment of Prisoners*. CSC's website states:

The most widely known, accessible and comprehensive international document regulating prison conditions and prisoner treatment around the world is the United Nations *Standard Minimum Rules for the Treatment of Prisoners (SMRs)*. Since the *SMRs* embody a greater level of practical detail about how prisoners should be treated than is generally to be found in international conventions and covenants, these model standards have become an enormously important point of reference for defining what constitutes humane treatment in the prison setting. Although not a legally enforceable human rights instrument *per se*, the *SMRs* have been used by national and international courts and non-governmental human rights organizations to provide guidance in interpreting binding human rights norms and standards...

...

... [I]n 1975 ... Canada's Delegation officially endorsed the *SMRs*, by agreeing to consider embodying them within both federal and provincial legislative frameworks. Canadian practice in both law and policy indicates a broad acceptance of the document's underlying principles and standards. Canadian law and correctional policy have taken into account these *essential* UN rules: ... appropriate bedding and clothing regularly laundered; regular exercise; ... prohibition of corporal punishment, solitary confinement and other cruel, unusual, and or degrading treatment; ... and *the right to be reasonably prepared for eventual return to the community*. Correctional authorities must provide for all of these things - and more - if they are to be found in compliance with the basic minimum standards to which the world community is expected to adhere.

When the 95 individual articles that comprise the *SMRs* are reduced to their essence, three fundamental human rights principles clearly emerge. *Firstly, a prisoner's sense of dignity and worth as a human being must be respected and maintained through the entire course of their imprisonment. Secondly, the suffering that results from the loss of liberty and freedom by*

³ *supra*

the fact of incarceration is punishment enough. Finally, prisons should not be punishing places; rather, they should help prisoners rehabilitate themselves. (my emphasis)

The fact that many states, including Canada, have incorporated these set of principles and rules in the legislative design of their correctional systems may be taken as evidence that the *SMRs* are now considered an essential element of international and, indeed, domestic human rights standards. ...

[42] I referred to the United Nations *Standard Minimum Rules for the Treatment of Prisoners* previously in *R. v. Firth*, 2013 NWTTC 16, a decision of mine which addressed the issue of the conditions of the “drunk tank” in Inuvik. Some of the United Nations’ *Standard Minimum Rules for the Treatment of Prisoners*⁴ are worth repeating here:

- Prisoners shall be provided with adequate water and toilet articles, and be required to keep themselves clean.
- Prisoners not allowed to wear their own clothing are to be provided with an adequate and suitable outfit, with provisions for laundry and changes of clothes.
- Every prisoner shall be provided with a separate bed and clean, separate and sufficient bedding.

[43] In *Firth*, I also referred to the American Bar Association’s publication *Standards on Treatment of Prisoners*⁵. And again it is useful to refer to some of those standards, which include:

⁴ <http://www.uncjin.org/Standards/UNRules.pdf>

⁵

http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/treatment_of_prisoners_commentary_website.authcheckdam.pdf

Standard 23-3.3 Housing areas

- (a) Correctional authorities should provide prisoners living quarters of adequate size. ...
- (b) Correctional authorities should provide each prisoner, at a minimum, with a bed and mattress off the floor, ...
- (c) Correctional authorities should provide sufficient access to showers at an appropriate temperature to enable each prisoner to shower as frequently as necessary to maintain general hygiene.

Standard 23-3.5 Provision of necessities

...

- (b) Correctional authorities should provide prisoners with clean, appropriately sized clothing suited to the season and facility temperature and to the prisoner's work assignment and gender, in quantities sufficient to allow for a daily change of clothing. ...
- (c) Correctional authorities should provide prisoners, without charge, basic individual hygiene items appropriate for their gender, as well as towels and bedding, which should be exchanged or laundered at least weekly.

...

Standard 23-3.8 Segregated housing

- (a) Correctional authorities should be permitted to physically separate prisoners in segregated housing from other prisoners but should not deprive them of those items or services necessary for the maintenance of psychological and physical wellbeing.
- ...
- (c) All prisoners placed in segregated housing should be provided with meaningful forms of mental, physical, and social stimulation. Depending upon individual assessments of risks, needs, and the reasons for placement in the segregated setting, those forms of stimulation should include:

(i) in-cell programming, which should be developed for prisoners who are not permitted to leave their cells;

(ii) additional out-of-cell time, taking into account the size of the prisoner's cell and the length of time the prisoner has been housed in this setting;

(iii) opportunities to exercise in the presence of other prisoners, although, if necessary, separated by security barriers;

(iv) daily face-to-face interaction with both uniformed and civilian staff; and

(v) access to radio or television for programming or mental stimulation ...

...

(e) No cell used to house prisoners in segregated housing should be smaller than 80 square feet, and cells should be designed to permit prisoners assigned to them to converse with and be observed by staff. ...

...

Standard 23-1.1 General principles governing imprisonment

...

(d) ... No prisoner should be subjected to cruel, inhuman, or degrading treatment or conditions.

...

[44] Section 53 of the *Corrections Service Regulations*, R.R.N.W.T. 1990, c.C-21, states:

53. Every inmate shall be provided with such toilet articles as are necessary for health and personal hygiene.

[45] I expect that one could find reference to some document in most countries that refers to the ethical, humane, and dignified treatment by the state of people whose liberty has been taken by the state. I do not intend to refer any further to

the standards of treatment of prisoners. One would hope that such standards would simply be the norm.

[46] I cannot accept hypothetical speculation as to why reasonable standards cannot be adhered to as a valid reason to disregard reasonable standards. I refer specifically to not supplying a mattress because it could be used as a barricade, or even though the mattress is made of tear proof material, that anything can be torn, or the prisoner had previously torn a mattress; or the reason for not turning the water on in the cell because a prisoner may use his or her hand to stop the drain in the sink, or his or her foot to plug the toilet, and thereby flood the cell; or not providing appropriate clothing because clothing can be used as a weapon.

[47] If standards are not complied with any time one can come up with a scenario in which compliance may result in a difficult situation, then the standards are meaningless. If we were to accept such a position, than the correction authorities could justify never supplying inmates clothing, toiletries, running water, beds and bedding, towels, cutlery. As a society we would not tolerate subjecting people to that kind of treatment, even if they are in custody, it would be inhumane, and “so excessive as to outrage standards of decency”⁶, and that is the definition of cruel and unusual treatment. I find the conditions that Mr. Palmantier was held in to be unacceptable, and amount to cruel and unusual treatment, and consequently a breach of his right under section 12 of the *Charter*.

[48] As I have said before in *Firth*, I cannot help but wonder how we can expect a person to behave in a respectful and civilized manner, when the state, the authorities, subject the person to inhumane and uncivilized conditions.

⁶ *R. v. Miller*, [1977] 2 S.C.R. 680; *R. v. Smith*, [1987] 1 S.C.R. 1045

V. CONCLUSION

[48] Taking into account the circumstances of these offences, and the need to deter this type of behaviour and protect the community, there is no alternative but to impose a jail sentence. I have also considered Mr. Palmantier's circumstances and his degree of culpability for these offences. In all the circumstances for the charge of uttering threats from August 18 and resisting a peace officer from the same date there will be a sentence of two months, and two months concurrent; on the charge of resisting a peace officer from September 9, there will be a sentence of one month consecutive; on the charge of possession of a weapon dangerous to the public peace from October 16, there will be a sentence of three months concurrent, and on the charge of resisting a peace officer from the same day, there will be a sentence of one month concurrent. Mr. Palmantier will be given three months' credit for the time he has spent in custody since the expiration of his sentence, and consequently there is no time remaining to be served. Mr. Palmantier will be placed on probation for a period of one year with a reporting condition in addition to the statutory conditions.

[49] There will also be a three year discretionary firearms prohibition and a secondary DNA order.

Bernadette E. Schmaltz
Territorial Court Judge

Dated this 10 day of March, 2014
at Yellowknife, Northwest Territories

R. v. Brooklyn PALMANTIER, 2014 NWTTC 10

Date: 03 07 14

File: T1 CR 2013 001458

T 1 CR 2013 001615

**IN THE TERRITORIAL COURT OF THE NORTHWEST
TERRITORIES**

IN THE MATTER OF

HER MAJESTY THE QUEEN

- and -

BROOKLYN JORDAN PALMANTIER

REASONS FOR SENTENCE

of the

HONOURABLE JUDGE B. E. SCHMALTZ
