

ORAL REASONS FOR JUDGMENT:

Before:

The Honourable Chief Justice McEachern

The Honourable Mr. Justice Hinds

The Honourable Mr. Justice Williams

Date and Place: March 13, 1996 Vancouver, B.C.

**BETWEEN: REGINA RESPONDENT AND: JOHN JAMES FALKENBERG
APPELLANT**

Mr. Falkenberg appearing on his own behalf
B. Johnstone appearing for the (Crown) Respondent

1 HINDS, J.A.: The appellant, who appears before us without counsel, seeks leave to appeal the following sentences imposed upon him by the Honourable Judge Rohrmoser for the following offences which I shall list in chronological order:

1. Breaking and Entering of Bailey's Neighbourhood Pub and committing theft therein on the 21st of October 1994 at Kamloops. On that charge he was sentenced to three months imprisonment concurrent to the sentence imposed on the third charge which I shall shortly describe.
2. Fraudulently obtaining food at Sinbad's Restaurant on 17 June 1995 at Kamloops and on that charge he was sentenced to two months imprisonment concurrent to the sentence on the third offence.
3. Breaking and Entering the Darfield Post Office near Barriere, British Columbia, on 20 June 1995 and committing theft therein and upon the conviction on that charge he was sentenced to 20 months imprisonment.
4. Using a money order as if it were genuine on the 20th June 1995 at Kamloops, British Columbia and on the conviction on that charge he was sentenced to 20 months imprisonment concurrent to the sentence imposed for the above noted third offence.

2 I shall briefly summarize the circumstances of the four offences and of the appellant. As a result of an intrusion alarm members of the R.C.M.P. attended at the premises of Bailey's Neighbourhood Pub on 20 October 1994. A breaking and entry had taken place and bottles of liquor and a liquor dispensing apparatus had been stolen. The following day the appellant and others were found in possession of a substantial number of bottles of liquor and a liquor dispenser machine similar to the one taken from the pub. The appellant was charged and pled guilty to possession of stolen property. He was sentenced to six months imprisonment.

3 Later after further investigation the police learned that the appellant was one of the persons who had broken and entered Bailey's Neighbourhood Pub on 21 October 1994. He was thereupon charged with the more serious offence - the offence which I have referred to as number one.

4 On 17 June 1995 the accused and two others spent two hours eating and drinking in Sinbad's restaurant in Kamloops. In recognition of the name of that establishment they departed without paying the bill of \$187.33. A waiter pursued them and caught the appellant and the police caught his two associates. They were all fairly intoxicated.

5 On 20 June 1995 the Darfield Post Office was broken into and approximately \$300 in cash, 24 blank money orders, and a money order impressing machine were stolen. Later that day a Native woman attempted to cash a postal money order for \$999.99 at a Bank of Nova Scotia in the Kamloops area. The police were called and they ascertained that the accused had made an arrangement with the Native woman for her to cash the postal money order. Further investigation at the residence of the accused who was staying in Kamloops, revealed the postal money order impressing machine in the room occupied by the accused. The mechanism of the machine was stuck or jammed at the number \$999.99.

6 The appellant is 25 years of age. He has a very lengthy criminal record particularly for a person of his age, amounting to approximately 18 or 20 charges for various offences including theft, breaking and entering, and various driving offences whilst his ability to drive was intoxicated by alcohol.

7 In sentencing the appellant the Provincial Court Judge took into consideration a number of factors including the following. First, the accused had spent approximately 45 days in custody awaiting sentence. Two, that the accused served the sentence of six months imprisonment he had received for being in possession of the liquor stolen in the break and enter of Bailey's Neighbourhood Pub. He reduced the sentence he imposed on the accused for the breaking and entering of Bailey's Pub from what he otherwise would have imposed for that offence. Three, the offences numbered two, three, and four were committed while he was on probation with respect to previous offences. At page 12 of the transcript of the proceedings at sentence the learned sentencing judge said this:

I'm giving you some credit for the dead time you've served. You've got an unabated criminal record for property and other offences. The sentence in its totality, in my view, could easily be two years less a day. You are on the fringe of serving heavier time. It's seldom done for property offences but because of the dead time that you've done, the total sentence I intend to impose is going to be for a period of twenty months, sir.

8 The sentencing judge then proceeded to sentence the accused for the four offences in the matter in which I have earlier described. Having reviewed the circumstances of the offences and of the appellant, having considered the comments made to us by the appellant today and the submissions of Crown Counsel I am unable to conclude that the sentence imposed upon the accused was unfit on either an individual or on a global basis.

9 I would grant leave to appeal the sentences but dismiss the appeal against sentence.

10 McEACHERN, C.J.B.C.: I agree.

11 WILLIAMS, J.A.: I agree.

12 McEACHERN, C.J.B.C.: Leave to appeal is granted. The appeal is dismissed.

"The Honourable Mr. Justice Hinds"