

COURT OF APPEAL FOR THE YUKON TERRITORY

Citation: *HMTQ et al v. Papequash aka
Graham,*
2003 YKCA 12

Date: 20030530
Docket: YU00498

Between:

**Her Majesty the Queen, Lucy McClung the Commissioner of the
Correctional Service of Canada, The Director of Community and
Correction Services and Sharon Hickey the Acting
Superintendent of the Whitehorse Correctional Centre**

Respondents

And

John Thomas Papequash aka Graham

Appellant

Before: The Honourable Madam Justice Rowles
The Honourable Mr. Justice Hall
The Honourable Madam Justice Levine

Oral Reasons for Judgment

VIA VIDEO CONFERENCE

E.J. Horembala	Counsel for the Appellant
L. Gouailler	Counsel for the Respondent, Commissioner
L. Moriss	Counsel for the Respondent, Acting Superintendent

Place and Date: Vancouver, British Columbia
May 30, 2003

[1] **ROWLES, J.A.:** This is an application for leave to appeal a global sentence of three years imposed on May 16, 2003 in the Territorial Court of the Yukon.

[2] The applicant was charged with a number of offences. He pleaded guilty to some and was found guilty of others. The most serious of the 11 offences was for robbery for which he received a sentence of 18 months incarceration. The applicant is a 20-year old aboriginal person. He has a youth court record for related offences. The longest previous sentence that he has had is 30 days.

[3] We are all of the view that leave to appeal ought to be granted and, as I understand it, the Crown does not oppose that application.

[4] As I mentioned during the hearing of this application there is a date available for the hearing of the appeal in Vancouver on July 14, 2003. I understand from counsel that that is a convenient date. The appeal will be heard on that date.

[5] There is one other matter to be dealt with. The appellant seeks an order that he not be removed from the Whitehorse Correctional Centre until the hearing of his appeal or the hearing of an application for release pending appeal.

In view of the provisions in s. 743.1(1) and (4) of the *Criminal Code*, it appears that such an order may be advisable. My colleagues, I understand, are also in agreement that that order should go.

[6] **HALL, J.A.:** I agree.

[7] **LEVINE, J.A.:** I agree.

[8] **ROWLES, J.A.:** Leave to appeal is granted. The appeal is set for July 14, 2003, in Vancouver. There will be an order that the appellant remain in the Whitehorse Correctional Centre until the hearing of his appeal or the hearing of the application for release pending appeal.

"The Honourable Madam Justice Rowles"