

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

AND:

THOMAS PAUL SHARP

Edward Horembala, Q. C.
John Phelps

For the Crown

Gordon Coffin

For the Defence

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): The Crown has made an application to have the Whitehorse Correctional Centre produce three files: a working file, a master file and a medical file, and any other information or materials in their possession pertaining to Thomas Paul Sharp.

[2] The three specific incidents are set out in the affidavit of Corporal Frank Campbell, specifically, paragraphs 15, 16 and 17 set out incidents where Mr. Sharp, in contact with Correctional Centre personnel, made certain statements and threats. In one case, with respect to Jim Paul, Mr. Sharp was reported to have said to Mr.

Paul, "On my mother's grave, Jim Paul, I swear I will cut your fucking throat." That was alleged to have taken place on January 28, 2003. On the same day it was alleged that Mr. Sharp spoke with Roberta Toudal, a Corrections Officer, and indicated to her that if he were to get to her daughter, after finishing with her, he would kill the little bitch.

[3] Then, it was alleged that on September 19, 2002, Mr. Sharp, also in discussion with Roberta Toudal, stated that she should just wait until Mr. Sharp caught her by herself. She asked him if that was a threat, and he apparently replied, "You bet that is a threat. That is a fucking promise, you punk-ass bitch; you are lucky I am not out of here."

[4] The precise question or issue before me is whether or not this conduct is relevant to the potential dangerous offender application by the Crown.

[5] There is an assessment that is going to take place by an expert and documentation is being accumulated to present to the expert in order to obtain that expert's opinion. The expert's opinion will relate to whether or not this individual, Mr. Sharp, is substantially or pathologically intractable. In my view, the incidents that are alleged to have occurred at the Whitehorse Correctional Centre are certainly relevant to that opinion.

[6] There is no question that criminal behavior which is not the subject of a criminal charge may be introduced in a dangerous offender proceeding. The Court of Appeal of Saskatchewan and Ontario have both ruled to that effect.

[7] It is understood, of course, that when the Crown seeks to introduce proof of

untried criminal offences in order to establish a pattern of behaviour for the purposes of dangerous offender proceedings, that portion of the application is akin to a trial and the conduct alleged must be proven beyond a reasonable doubt.

[8] The defence raises the issue that some of that evidence may be somewhat one-sided in the sense that the reports will be coming from Correctional officers. However, it is also clear that Mr. Sharp will have his opportunity with the assessor to give his opinion on those facts and incidents.

[9] Ultimately, whether or not the opinion of the expert will be accepted or given any weight will depend upon a finding that the facts have been proven beyond a reasonable doubt and that they can be accordingly relied upon in assessing the opinion of the assessor.

[10] Defence counsel suggested that the procedure should be that the incidents alleged would be proved beyond a reasonable doubt or be required to be proved beyond a reasonable doubt before they could be put before the assessor. Unfortunately, procedurally, I do not think that would be a very wise circumstance given the authority of the Supreme Court of Canada and the two Courts of Appeal mentioned.

[11] In my view, it is appropriate, as in any assessment of the opinion of an expert, that the court determine whether or not the underlying assumptions and facts relied upon by that expert are indeed proved beyond a reasonable doubt. I am satisfied that that process will take place during the sentencing hearing, should the dangerous offender application proceed.

[12] I am therefore ordering that the documents requested in the application of the Crown be produced to the Attorney General of Canada and to counsel for the defence, for delivery to the expert whose opinion is being sought.

[13] Anything further?

[14] MR. HOREMBALA: I think that we requested the word "forthwith" because the psychiatrist is coming on the 22nd and 23rd.

[15] THE COURT: I think forthwith would be very appropriate. I do not think that would be disputed by the correctional facility. Thank you, counsel.

VEALE J.