

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

AND:

WAYNE JOE VALIHORA

Leigh Gower

For the Crown

Gordon Coffin

For the Defence

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): Wayne Joe Valihora has been convicted under section 139(2) of the *Criminal Code*, of attempting to obstruct the course of justice.

[2] The offence carries a maximum term of imprisonment of ten years, indicating that it is considered to be a very serious offence. This is so, because the offence is a psychological attack on any individual who's involved in the justice system. However, even more, the offence is significant because it is an attack on the very heart of the administration of justice.

[3] If offences like these go undeterred, our justice system would not function because people, like Clinton Fraser, would be reluctant to report crimes and appear in court. This is an offence where deterrence is the paramount factor.

[4] The facts of the offence arise out of an Information laid against Mr. Valihora's son, who was charged with uttering a threat against Clinton Fraser, to cause him bodily harm on November 25, 2001.

[5] On November 26, 2001, Mr. Valihora, an acquaintance of Clinton Fraser made a telephone call to Clinton Fraser threatening that if Clinton Fraser testified against Valihora's son, he would get even with him and nobody would be safe. Fortunately, Clinton Fraser reported the phone call to the police immediately.

[6] The offence had a significant psychological impact on Clinton Fraser. His victim impact statement states that he now keeps a low profile because he is afraid that Mr. Valihora will go after somebody he knows to get even.

[7] The aggravating factors are that Mr. Valihora seems to treat the offence as being a mere phone call and he has belittled Mr. Fraser, who has clearly been affected by the offence. Mr. Valihora has not taken full responsibility for the offence, and has not considered how he should change his behavior, as opposed to blaming everyone else for the problems that his actions bring on himself.

[8] However, the letter that Mr. Valihora submitted with the pre-sentence report shows some remorse for how Mr. Fraser felt threatened and that he does not wish for harm to come to him.

[9] Mr. Valihora has good support from his family and friends and a reputation of being a good woodcutter, who wants to get back to work.

[10] His criminal record, while very serious, is quite dated, with the exception of the recent impaired charge.

[11] The Crown seeks a total sentence of six months incarceration, and defence counsel has submitted that a 90 day sentence to be served intermittently, would be appropriate.

[12] I'm of the view that there are some distinctions between the offence that Mr. Valihora has committed and those cases submitted to the court, where lengthy jail sentences resulted.

[13] However, I do not find the fact that you were obstructing justice to help a family member, as somehow reducing the severity, or seriousness of the offence.

[14] However, I'm mindful of the fact that parliament has instructed judges under s. 718.2 to consider less restrictive sanctions, which in this case would allow you to continue to provide for your family.

[15] I am therefore going to credit you with double time for the 24 days you have already served and sentence you to a further period of incarceration of 90 days to be served intermittently as follows: you are to attend at the Whitehorse Correctional Centre, on Range Road, Whitehorse, Yukon at 7:30 p.m. on Friday the 13th of December, 2002 for release on Monday the 16th of December 2002 at 7:00 a.m., or

such earlier hour, as may be convenient for the custodial authorities to release you; and, to attend thereafter, on Friday's at 7:30 p.m. for release on Monday's until the sentence is served in full.

[16] While serving this intermittent sentence you are placed on probation at all times, when in not actual confinement.

[17] For a further period of two years, on completion of your sentence of incarceration, the terms and conditions are as follows: to keep the peace and be of good behavior, appear before the court when required to do so, report immediately to, and be under the supervision of a probation officer, not to leave the jurisdiction of the court without the written permission of the probation officer.

[18] Do not consume alcohol during the 24 hour period immediately proceeding the time that you are to report to the Whitehorse Correctional Institute to serve your sentence. If so directed, to submit to a breathalyzer test upon demand by a peace officer who has reason to believe you have failed to comply with this condition.

[19] THE COURT: Mr. Gower, s. 109(1)(a), is this the first conviction?

[20] MR. GOWER: Sorry, the first conviction for violence?

[21] THE COURT: Is it the first conviction for s. 109(1)(a), in terms of the order under s. 109(2), which varies under whether it's the first conviction or a subsequent one.

[22] MR. GOWER: Crown's content to be treated as a first conviction.

[23] THE COURT: Thank you.

[24] Further, under s. 109(2)(a) and (b), you will be ordered to be prohibited from having in your possession any firearm, cross-bow or restricted weapon, ammunition or explosive substance for a period that begins on the day this order is made and ends not earlier than 10 years after your release from imprisonment.

[25] And, you will be prohibited from having in your possession, any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life, contrary to s. 109(2)(b).

[26] THE COURT: I take it Mr. Gower that he should be ordered to surrender any of those weapons to a police officer?

[27] MR. GOWER: Yes, My Lord.

[28] Mr. Valihora should surrender any weapons to a police officer within two days from the date of this order, pursuant to s. 114 of the *Criminal Code*.

[29] Additional terms of the probation order, are that you should take any assessment counseling, programming or treatment as directed by your probation officer. And I say that particularly with respect to anger management, and anything that will help you understand the nature of your offence and start dealing with your offence yourself rather than blaming it on everyone else.

[30] No contact directly with Clinton Fraser, at any work place of Clinton Fraser and particularly the Gold Rush Inn.

[31] THE COURT: Anything further, Mr. Gower?

[32] MR. GOWER: I was just wondering if the no contact could be directly or indirectly?

[33] THE COURT: Yes, it could. I thought I said that. I'm sorry. It's directly or indirectly. And, the victim fine surcharge?

[34] MR. GOWER: Under the circumstances, Crown would be content that that be waived.

[35] THE COURT: Thank you. I'll order that be waived. Anything further?

[36] THE CLERK: My Lord, may I just clarify one thing on my list? So aside from the intermittent probation then it is a two year probation to follow the jail sentence?

[37] THE COURT: That's correct.

[38] MR. GOWER: And, My Lord, I'm wondering if we can also make it a term of probation that would be in place during the intermittent sentence that the no contact order apply to that as well.

[39] THE COURT: Thank you for that, that should apply as well.

[40] MR. COFFIN: I take it, My Lord, that the term, not leaving the jurisdiction applies in both orders.

[41] THE COURT: Yes, it does.

[42] MR. COFFIN: Thank you.

VEALE J.