

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL SITTINGS

HEARD OCTOBER 19, 1994

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HER MAJESTY  
THE QUEEN

APPELLANT

- and -

JAMES PITSEOLAK

RESPONDENT

COUNSEL

Louise  
Charbonneau

TRIAL JUDGE

BROWNE,  
T.C.J.

COURT

HETHERINGTON, J.A.  
VERTES, J.A.  
McFADYEN, J.A.

Desmond  
Brice-Bennett



APPEAL #CA 00478

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MEMORANDUM OF JUDGMENT

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THE COURT:

This matter involves a serious spousal assault which resulted in serious injuries to the victim. The learned trial judge imposed a sentence of 5 months imprisonment plus probation.

The Crown seeks leave to appeal this sentence. The sentence imposed is much lower than we would have imposed, and is much lower than should be imposed considering the nature of the assault and the injuries sustained by the victim. Nevertheless, having regard to all the circumstances, we have decided that leave to appeal should not be granted.

The learned trial judge carefully considered all relevant factors in sentencing, including deterrence and denunciation. She placed greater emphasis on the prospects of the reconciliation of the family than she should have.

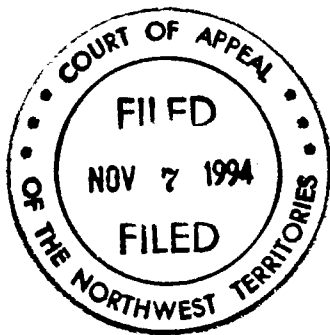
We have, however, considered the following factors:


- (1) The unusual circumstances of this case. The violent acts occurred immediately after the respondent discovered his wife having sexual intercourse with another man on their living room floor. To adopt the language of section 232 of the **Criminal Code**, the respondent acted on the sudden and before there was time for his passions to cool. While this does not excuse what the respondent did, this circumstance suggests that the act was impulsive and negates planning or premeditation on the part of the respondent.

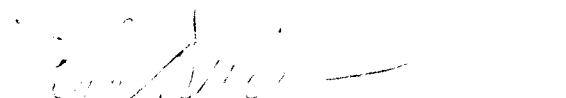
- (2) The respondent has been released from custody after having served the full custodial sentence.
- (3) The Crown made no effort to expedite the appeal.
- (4) The offence occurred some 14 months ago. While awaiting disposition, and since the date of his release, the respondent has taken serious steps toward his rehabilitation. Since his release from custody, he and his wife have resumed counselling with the elders in their community. He is making good progress toward rehabilitation.

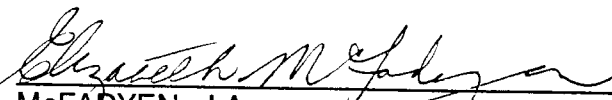
In light of these factors, we are not inclined to re-incarcerate the respondent. We refuse leave to appeal against the sentence. We emphasize that, in doing so, we are not suggesting that the sentence imposed in this case is fit.

JUDGMENT DATED at  
YELLOWKNIFE, N.W.T.,  
this 7th day of November  
1994.



  
HETHERINGTON, J.A.

  
VERTES, J.A.

  
McFADYEN, J.A.