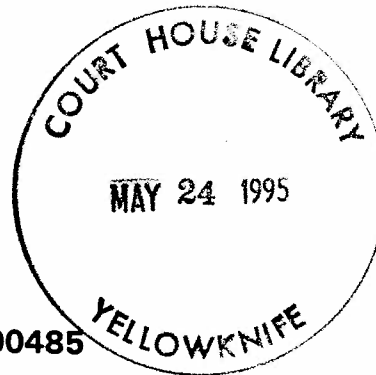


IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL APPEAL SITTINGS

HEARD OCTOBER 19, 1994

	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	<u>COURT</u>
HER MAJESTY THE QUEEN Appellant	L. Rose	Davis, T.C.J.	Hetherington, J.A. Vertes, J.A. McFadyen, J.A.
- and -			
PATSY AKANA Respondent	S. Duke		



APPEAL #CA 00485

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCHVERTES J.A. (for the Court):

The Crown appeals a sentence of 90 days imprisonment imposed on a charge of assault. The circumstances are somewhat unusual in that the charge does not relate to one discreet incident but to a series of incidents, indeed a pattern of behaviour, over 2 years.

The victim was the appellant's common-law wife. The respondent, through his counsel, admitted that in the period from February, 1992, to June, 1994, he had, on numerous occasions, assaulted his spouse. His spouse could recollect the details

of only five of these incidents but it was admitted that there were other similar incidents. In the last incident, that one occurring on June 22, 1994, the couple's 2 year old child sustained a minor injury as well in the assault.

The assaults consisted of slaps, kicks and threats both verbal and with dangerous weapons. Because of the threats the victim was afraid to speak to the police. Fortunately the victim did not suffer any serious injuries from these assaults. The parties are now separated.

The respondent is 27 years old. He has a minor criminal record. He does have a previous assault conviction from 1991 (but not involving the same victim). To his credit he entered his guilty plea at the earliest opportunity and we take that into account.

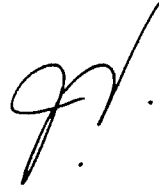
The significant factor present in this case is the pattern of oppression and abuse extending over the 2 year period. The trial judge recognized this when he said: "The accused also appeared to be attempting to have control over his spouse by warning her that she could be injured if he were ever required to go to jail." In our opinion it is this very pattern of repetitive behaviour extending over a lengthy period of time that demands a sentence that reflects the paramount considerations of deterrence and denunciation.

Unfortunately the trial judge does not seem to have given consideration to these factors. He said that the assaults were serious matters but yet concluded that a short period of time in jail was sufficient to ensure, in his words, that the respondent "improves his attitude".

This crime reveals a serious pattern of criminal behaviour. In our opinion the sentence is wholly inadequate to emphasize the need for deterrence and denunciation.

The respondent has now been released from jail. We are always reluctant to send a person back to jail after he has served the sentence initially imposed at trial but, in the circumstances of this case, we have a responsibility to impose a sentence that adequately reflects the guiding principles in cases of domestic violence.

We therefore allow the Crown sentence appeal and increase the sentence to 12 months imprisonment. Credit, of course, is to be given for time already served. The probation order will remain in place.

A handwritten signature in black ink, appearing to be the initials 'J.P.' with a flourish at the end.

DATED AT Yellowknife, Northwest Territories
this 24th day of October, 1994

