CA 94 014

**IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES**

**YELLOWKNIFE CRIMINAL APPEAL SITTINGS**

**HEARD OCTOBER 19, 1994**

---

| | COUNSEL | TRIAL JUDGE | COURT |
|---|---|---|---|
| **HER MAJESTY THE QUEEN** | A. Regel | Davis, T.C.J. | Hetherington, J.A.<br>Vertes, J.A.<br>McFadyen, J.A. |
| Appellant | | | |
| - and - | | | |
| **CHARLIE EVAGLOK** | S. Duke | | |
| Respondent | | | |



**APPEAL #CA 00486**

---

**MEMORANDUM OF JUDGMENT**
**DELIVERED FROM THE BENCH**

---

**VERTES J.A.** (for the Court):

The Crown appeals the sentences imposed on charges of assault with a weapon and break and enter with intent to commit an assault. The sentences imposed were 5 months incarceration on the assault charge and a $500 fine and probation on the break and enter charge. These offences are related and occurred within the space of two days.

The respondent had apparently formed the suspicion that his wife was unfaithful. He was intoxicated. He went looking for his wife and broke into another person's home for the admitted purpose of assaulting her. The next day he located his wife and dragged her home where he punched her, struck her in the face with a baseball bat, and humiliated her by cutting her hair and burning her clothes. She sustained serious injuries but it is truly amazing and fortunate that they were not life threatening.

At the time of sentencing the respondent and his wife were separated. There was a representation made at the time of sentencing that the victim was willing to try and work things out with her husband in an effort at reconciliation. The trial judge seems to have placed reliance on this factor in priority to all others. He said the assault was serious enough to impose a jail term but then imposed what we think even the trial judge recognized as an extremely lenient sentence simply because of the mere possibility of reconciliation. He said in his judgment:

> On the assault with a weapon, ... I had seriously considered somewhere in the vicinity of a year in jail on this matter alone. Because of what has happened and because your wife is willing to re-establish the relationship, and I hope that you can do that relatively soon, I am only going to impose at this time a five month jail term on that charge ...

The authoritative statement of law on this point is that of the Alberta Court of Appeal in R v. Ollenberger (1994), 29 C.R. (4th) 166, to the effect that where a

serious assault is involved, deterrence and denunciation are of paramount importance in sentencing ----- more important than the preservation of the family.

The trial judge failed to give effect to this principle.

It is submitted on behalf of the respondent that this was an isolated incident and out of character. Certainly there was no evidence of a cycle of abuse in this relationship. This point too was addressed in Ollenberger where it was emphasized that isolated instances of abuse need to be deterred just as much as repeated instances. This case, just as Ollenberger, illustrates how much damage an isolated incident can do.

We are agreed that the sentence of 5 months is wholly inadequate. Were it not for the fact that the respondent appears to have a good background and that the attack on his wife does appear to be out of character, we would have no hesitation in imposing a penitentiary term. In the circumstances of this case, and with a view to assisting the respondent at least to have the opportunity of maintaining his employment in the future, and since it appears from his dated and minor record that he has never been incarcerated, we have decided that an appropriate sentence is one of 2 years less 1 day.

With respect to the break and enter charge it appears that the trial judge

failed to give effect to the admitted purpose of the accused in the entry, that being to assault his wife. He seems to have treated it as any other first time break and enter offence. The respondent violated the sanctity of another person's home for the purpose of violating his wife's health. The imposition of a fine is totally inappropriate in these circumstances.

Because we are of the view that a global sentence of 2 years less 1 day is the appropriate one we have decided that an appropriate sentence on the break and enter charge would be the same as on the assault charge and concurrent to it.

We have taken into account the prompt guilty plea and can only say that but for that, and the good background of the respondent, even now we would be sending him to the penitentiary.

We therefore allow the Crown's appeal. The sentences imposed by the Territorial Court are set aside.

On the charge of assault with a weapon, we impose a sentence of 2 years less 1 day.

On the charge of break and enter with intent we impose a sentence of 2 years less 1 day to be served concurrently.

There will also be a probation order for a period of 1 year with the same terms and conditions as those imposed by the Territorial Court Judge below.

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