

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

WALTER JOSEPH EDGI

Trial Held at Fort Good Hope, Northwest Territories
April 19, 1977

Guilty

Sentence: Three Years

Oral Reasons for Judgment of:

The Honourable Mr. Justice C. F. Tallis

Counsel on the Hearing:

Mr. B. Fontaine, for the Crown

Mr. D. Geldreich, for the Accused

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ORAL REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE C. F. TALLIS

In this particular case I have given very careful consideration to the question of sentence to be imposed on the Accused who has pleaded guilty to the offence of rape. Rape is recognized under our Criminal Code as one of the very serious offences. It carries with it the possibility of a sentence of life imprisonment, but does place a great discretion in the Courts, because there is no minimum sentence to be imposed.

In this particular case both Counsel have recognized the seriousness of the offence and the one aggravating feature of it that has been put before the Court deals with the age of the victim, a lady over sixty years of age who was at home

with her husband, minding her own business, if I may use that term. There is no doubt that the accused was at the time of the offence under the influence of liquor, but I have said on a number of occasions that drunkenness or partial intoxication may be an explanation, but it is not an excuse.

Furthermore, the accused at the time of this offence was on probation and one of the terms of his probation was that he would refrain from the use of alcohol. This of course coupled with his past record indicates that liquor has been a problem with him and that he was warned that this would create further problems for him if he did not refrain from using it.

In dealing with cases of this nature I have taken into account the principles of sentencing that have been outlined in the case of *Regina v. Morrissette et al*, 12 C.R.N.S. at page 392, the case of *Regina v. Hinch and Salanski*, 62 W.W.R. at page 205, which is a judgment of the British Columbia Court of Appeal and I have also taken into account the general principles of sentencing that are dealt with in the Ontario Court of Appeal in the case of *The Queen v. Wilmott*, (1967) 1 C.C.C. at page 171, particularly at pages 177 to 179.

The principles of sentencing, to state them in brief, involve the following factors: 1) punishment, 2) deterrence and in using the term deterrence that refers not only

to deterring the accused but also deterring other people who might be so minded to commit the same or a similar offence.

3) protection of the public. That of course is an obvious factor that must be taken into account, and 4) the reformation and rehabilitation of the offender which is also an obvious factor that must be taken into account and in this particular case the report of Dr. Brooks filed as Exhibit S-1 pinpoints the problem.

The public, in my view, can best be protected by the imposition of a sentence that takes into account all of these factors. I must say, as I said earlier in the discussion with Counsel in this Court, that I place the factor of punishment for punishment sake at the lower end of the scale. Indeed, I think that in this day and age that is one factor that is given minimal if any consideration. In this particular case I do however have to consider the other three factors and try to strike a balance between them. In striking that balance the sentence that I impose must in my view be one that does not crush or destroy any possibility of rehabilitation, but at the same time must be one which vindicates the law when you bear in mind the seriousness of the offence.

In this particular case the accused does have a previous record and from that record I glean that liquor has been a factor in causing him to get into trouble. On the other hand

the man does have ability and this ability can be channelled in the right direction and of course society will be much better off. There is no future for the accused or society in having him maintained at a penal institution for the remainder of his years at public expense.

In this particular case I have said and I repeat, I think that the sentence imposed must be of sufficient length to enable medical people to embark on a course of treatment which will hopefully solve some or all of his problems. If the accused responds to treatment then of course the Parole Board may very well grant parole under appropriate circumstances. However, I must impose a sentence which I feel is just and proper under all of the circumstances and in this particular case I feel that an appropriate sentence would be three years in a Federal Penitentiary.

I accordingly sentence the Accused to three years in a Federal Penitentiary and in imposing that sentence I want to make it quite clear that I am going to have a transcript of my remarks prepared for transmission to the appropriate authorities and I am also going to write a letter in which I make specific reference to the medical report marked Exhibit No. S-1 in these proceedings. In other words, it is the Court's wish that every effort be made to see that this person receives the proper treatment and if he responds to that treatment I have no doubt that the Parole Board will take into account the various factors that they do in granting parole.

In imposing the sentence of three years I do so not as a vindictive sentence, but rather taking into account that it is my view that a sentence of that length is necessary in order to enable proper steps to be taken in this case and also, having regard to the serious nature of the crime. I have already pointed out that in the *Morrisette* case one of the accused in that case was at trial sentenced to ten years and that it was reduced to five years on appeal. Since that judgment came out the Courts have I think tended to impose lower sentences and following that line of reasoning I have tried to strike a fair balance between the various factors.

I must say, Mr. Edgi, that initially I was inclined to look at this offence as calling for much more than three years. However, in view of the submissions that have been made by your Counsel Mr. Geldreich and the position taken by Crown Counsel I think this is a case where three years is an adequate and fair sentence to all concerned and it is my hope that when you are serving your sentence with your abilities you will recognize the importance of co-operating with the people who are trying to help you. Everyone here has given an indication that they support the recommendations of Dr. Brooks and I hope that you will take these recommendations to heart and a great deal depends upon you.

I therefore impose a sentence in this case of three years in a Federal Penitentiary. Mr. Geldreich, I am not adding

any rider about it being served in the Yellowknife Correction Centre, because I think that probably would be self defeating in this particular case. Do you agree?

MR. GELDREICH: Yes.

THE COURT: In many cases there is a request by counsel that it be served in Yellowknife, but in this particular case, having regard to Dr. Brooks' observations, it seems to me that that is the last thing that you would want the Court to do and even if you asked for it I would not be prepared to do it.

MR. GELDREICH: I have no intention of making such a request.

THE COURT: Obviously we are thinking along the same lines then and I mention that just in case your client wonders why it was left that way.