

CR 02639

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

TIMOTHY ALEXANDER BETTGER and  
ALLAN RAYMOND SHEARING



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Transcript of the Reasons for Sentence Delivered by The  
Honourable Mr. Justice J. Z. Vertes, at Yellowknife in the  
Northwest Territories, on Friday, May 5th, A.D., 1995.

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APPEARANCES:

MR. D. CLAXON:  
MR. L. ROSE:

Counsel for the Crown

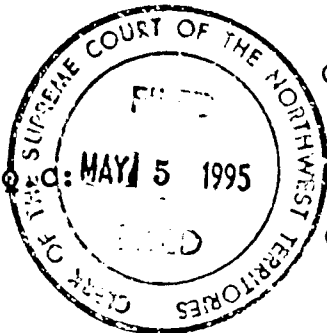
MR. N. SHARKEY

FILED  
MAY 5 1995

Counsel for Mr. Shearing

MS. S. COOPER:

Counsel for Mr. Bettger



1 THE COURT: I have before me for sentencing today  
2 Timothy Alexander Bettger and Allan Raymond Shearing.  
3 Bettger has entered guilty pleas to three charges:

4  
5 (1) a break, enter and theft at the Giant Mine on  
6 June 29, 1992;

7 (2) causing damage by explosion to a satellite dish  
8 on the Giant Mine property on July 22, 1992;

9 (3) causing damage by explosion to a ventilation  
10 shaft at the Giant Mine on September 1, 1992.

11

12 Shearing has entered guilty pleas to two charges:

13

14 (1) the break, enter and theft on June 29, 1992;  
15 and,

16 (2) causing damage by explosion to the ventilation  
17 shaft on September 1, 1992.

18

19 Each of these offences carry a potential maximum  
20 penalty of 14 years imprisonment.

21 I have had the benefit of extensive and thorough  
22 submissions, and I thank all counsel for them. I  
23 would be remiss if I did not as well commend all  
24 counsel for the way in which they were able to resolve  
25 these matters.

26 The facts relating to these charges are set out in  
27 a statement of facts agreed to by all parties. I will

1           therefore only repeat them in a summary fashion.

2           The two accused were employed at the Giant Mine  
3 here in Yellowknife. In late May of 1992, as a result  
4 of a breakdown in collective bargaining negotiations,  
5 the employer locked out the unionized workers who then  
6 went on strike. The accused were members of the  
7 union. The lock-out and strike became extremely  
8 volatile, especially after the employer brought in  
9 replacement workers, and incidents of violence  
10 erupted.

11           In the early morning of June 29, 1992, the two  
12 accused and a third striking miner entered the mine  
13 surreptitiously and proceeded underground where they  
14 spray painted anti-scab slogans on various pieces of  
15 equipment. They also stole a quantity of explosives,  
16 blasting caps and tape fuses. The third member of  
17 this group pleaded guilty to this offence quite some  
18 time ago and was sentenced to three months in jail  
19 (but I do not have any other particulars relating to  
20 that individual).

21           In the early morning of July 22, 1992, Bettger,  
22 along with at least one other person, attended on the  
23 mine property and set an explosive device at the  
24 bottom of a satellite dish used for television  
25 transmissions. The ensuing explosion blew a 14 inch  
26 hole in the dish and scattered debris for  
27 approximately 100 feet. The costs incurred by this

1 damage were approximately \$25,000.

2 Finally, at around midnight on September 1, 1992,  
3 an explosion damaged the main ventilation system for  
4 the mine causing damage expense of approximately  
5 \$115,000. The blast was caused by an explosive device  
6 planted by the two accused. The device did not go off  
7 as originally planned on the previous night, so 24  
8 hours later both accused returned to the site and  
9 reset the device. In addition to the ventilation  
10 system being damaged, shrapnel from the blast damaged  
11 another building some 22 feet away. There was no  
12 danger to the underground mine workers as a result of  
13 the blast.

14 The Crown conceded that there was no intent on the  
15 part of the accused to cause injury or death to other  
16 persons. Yet it should be obvious that these  
17 activities were not only well planned and deliberate,  
18 involving not just these accused but others as well,  
19 but that these activities were also inherently  
20 dangerous. The Crown characterized these activities  
21 as reckless. Defence counsel emphasized the knowledge  
22 and expertise of both accused so as to show that they  
23 were not reckless. In my opinion, they were not  
24 reckless. They were calculating and deliberate,  
25 careful and cunning, all of which are aggravating  
26 factors. But the point is that with these home-made  
27 devices, anything could have happened. It is only

1 fortunate that no one was hurt. But I do not sentence  
2 on what might have been, only on what was done by  
3 these accused. Nevertheless, I firmly conclude that  
4 these activities were dangerous.

5 I want to address a few matters of consequence  
6 before dealing specifically with these accused as  
7 individuals.

8 At the conclusion of the sentencing hearing, I  
9 heard an eloquent statement by the accused Bettger as  
10 to why he did what he did. He said in effect that he  
11 supported the union because of his concerns over  
12 safety and other issues on the work site, that when  
13 tensions escalated on the picket line he felt that the  
14 company and the police were using intimidation  
15 tactics, that he was frustrated over what he perceived  
16 as the lack of good faith on the other side in trying  
17 to resolve the strike, and that he felt he had almost  
18 no choice but to do something drastic to draw  
19 attention to the union cause and to force the company  
20 to settle the strike. The accused Shearing joined in  
21 these comments. His counsel submitted that these men  
22 felt that there was "systemic unfairness" to the  
23 union.

24 I am not in any position to say who, if anyone,  
25 was right or wrong in the Giant Mine strike.  
26 Certainly the company and the police do not have the  
27 opportunity to defend themselves in this proceeding.

1 I can, however, accept Bettger's comments for what  
2 they were, an expression of genuinely held belief.  
3 But the sincerity of those beliefs do not necessarily  
4 mean they are right. Nor can they be a justification  
5 for criminal conduct. I recognize, however, that  
6 Bettger was not offering these comments as an excuse,  
7 but merely to explain his motivations.

8 I can appreciate the frustration and fear of  
9 working people who see their jobs endangered. I know,  
10 as I am sure many others know, the volatile history of  
11 labour relations in Canada in situations where  
12 replacement workers are brought on to a job site. But  
13 none of that excuses or justifies the commission of  
14 acts of violence. These two men did not act  
15 impulsively, in a state of uncontrollable rage; they  
16 acted with deliberation and careful pre-meditation.  
17 It is for these crimes that they are being sentenced,  
18 not for anything else.

19 How can these offences be characterized? Crown  
20 counsel submitted that these were terrorist acts  
21 designed to intimidate. It is indisputable that the  
22 motives of the accused were to force the company back  
23 to the bargaining table through intimidation, and to  
24 instill fear in the replacement workers. These men  
25 are not political terrorists as we use that term, but  
26 they were willing to resort to instruments of terror  
27 to frighten people. I cannot help but think that by

1 their use of these methods, they simply escalated the  
2 level of tension and in fact added to an environment  
3 where violence continued to erupt. No act can be  
4 viewed in isolation. There was a pervasive atmosphere  
5 of fear and violence and these acts only contributed  
6 to it.

7 Courts across Canada, in similar situations, have  
8 expressed their condemnation of such conduct by the  
9 imposition of lengthy prison sentences. As stated by  
10 the Alberta Court of Appeal, for example, in the  
11 **Thurston** case (149 A.R. 226):

12 "...crimes of urban intimidation are totally  
13 inconsistent with the freedoms that were accorded  
14 the citizens of a democratic Canada, and will not  
15 be tolerated by the court. Those freedoms depend  
16 upon the recognition by every citizen of the rule  
17 of law, and the inescapable fact that there is a  
18 duty which accompanies every right. A free society  
19 cannot survive when zealots, no matter how laudable  
20 their motives might be and no matter how passionately  
they hold their beliefs, deliberately break the law in  
an effort to impose their will on others by dangerous  
and unlawful intimidation. When they do, the court  
has an obligation to impose an exemplary sentence to  
recognize the serious nature of the crimes and to  
deter others from seeking to achieve their private  
ends through similar illegal means".

21 Cases of property damage for purposes of  
22 intimidation, sabotage or retaliation, with a high  
23 degree of premeditation and planning, have  
24 consistently attracted penitentiary terms. And, as  
25 previously stated, this holds true whether the cause  
26 is a good one or a bad one.

27 The reason for that is because we live in a

1 society of laws. We have a civil order to our society  
2 where individual freedoms are protected. But the  
3 basis for that protection is an adherence by all  
4 members of society to laws that reflect the basic  
5 moral values of the society. If any one person's or  
6 any one group's individual goals are seen as  
7 justifying the breaking of the law, then civil order  
8 breaks down for everyone.

9 The aim of sentencing in any case is to enhance  
10 the authority of the law by protecting the public.  
11 Protection of the public is achieved by preventing  
12 offenders from reoffending and by discouraging others  
13 from ever offending. But unfortunately there is no  
14 set formula to determine the appropriate sentence in  
15 any given case. Every sentence depends on the  
16 particular circumstances of the offence and the  
17 particular circumstances of the offender. The factors  
18 that are to be considered in every case are those of  
19 specific and general deterrence, rehabilitation and  
20 denunciation.

21 In this case, I am satisfied that the factors of  
22 specific or individual deterrence and rehabilitation  
23 of each of these accused are not concerns. Neither of  
24 them were offenders prior to this strike, nor do I  
25 expect they will be in the future.

26 Bettger is 38 years old while Shearing is 47 years  
27 old. Bettger worked at Giant Mines since 1987 as a



1 heavy duty mechanic. Shearing worked there since 1977  
2 also as a heavy duty mechanic. Both of them were  
3 regarded as good skilled workers. Shearing was also  
4 highly respected for his mine rescue skills. Both of  
5 them are parents with supportive families who I have  
6 no doubt have suffered greatly as a result of their  
7 actions.

8 This leaves the factors of general deterrence and  
9 denunciation - factors which are to a great extent  
10 intertwined.

11 General deterrence is the example provided by  
12 sanctions so as to deter others from acting in the  
13 same way. Denunciation is simply the reflection  
14 through a sentence of society's condemnation of this  
15 type of conduct. They go hand in hand because as has  
16 been stated in other cases, they reflect society's  
17 interest, the public interest, in the maintenance of  
18 law and order. These two accused, by their deliberate  
19 conduct, no matter how sincere their motives, chose to  
20 cross the line into criminal activity. They knew they  
21 were committing dangerous acts. They chose to  
22 continue those acts. It is not as if they had no  
23 options. For those reasons, general deterrence and  
24 denunciation are the over-riding factors.

25 What is the message that these two men were  
26 sending by their actions? That it is okay to commit  
27 crimes of violence if you are out on strike and feel

1 hard done by? Well now the court has to send the  
2 message that acts of violence are never acceptable and  
3 are never to be condoned in a civilized society. And  
4 I know that the Canadian public agrees with that.

5 These two men made a choice. . While the majority  
6 of their fellow workers stayed within the law while on  
7 strike, these two men chose to become criminals. And  
8 now I must try to impose a sentence that will reflect  
9 society's strong disapproval of this conduct, and also  
10 deter others from ever resorting to such violence in  
11 the future.

12 It seems to me, having regard to the cases cited  
13 to me, that sentences in the range of four to five  
14 years could be imposed for these offences. But I will  
15 use restraint. As I said before, I do not expect that  
16 either of these men will pose a continuing danger. I  
17 also take into consideration the guilty pleas which,  
18 as always, I consider to be mitigating. It at least  
19 indicates that the accused are prepared to take  
20 responsibility for their conduct. I also take into  
21 account the eight months spent in pre-trial custody.

22 Having taken all these factors into account, the  
23 real questions are what would be an appropriate total  
24 sentence for each accused, and can that sentence be  
25 kept to Territorial time. I have concluded that the  
26 total sentence in each case must be in excess of two  
27 years. I realize, as Defence counsel put it, that for

1           these men the fact of jail is more significant perhaps  
2           than the length of jail time. But these were  
3           calculated acts of violent intimidation and I cannot  
4           sanction anything less than federal time, although as  
5           will be seen, it can be kept in my opinion to the very  
6           low end of the scale.

7           I also have concluded that I must draw some  
8           distinction between the two accused. Bettger has been  
9           convicted of three offences, Shearing of only two.  
10          Shearing was previously convicted of two other, albeit  
11          minor, acts of violence also arising out of the strike  
12          situation, but they are not in the pure legal sense of  
13          the term "prior" convictions. Therefore there will be  
14          a difference, but the difference will not be great.

15          Stand up, Mr. Bettger. With respect to count 4 of  
16          the indictment, that being the charge of causing  
17          damage by explosion to the ventilation shaft, I  
18          sentence you to serve a term of imprisonment of two  
19          years. With respect to count 2, that being the  
20          charge of causing damage to the satellite dish, I  
21          sentence you to serve a term of imprisonment of six  
22          months consecutive. With respect to count 1, that  
23          being the break and enter and theft charge, I sentence  
24          you to serve a further term of six months consecutive  
25          for a total term of three years imprisonment. You may  
26          sit down.

27          Stand up, Mr. Shearing. On count 4, with respect

1 to the damage to the ventilation shaft, I sentence you  
2 as well to a term of imprisonment of two years. On  
3 count 1, the break and enter charge, I sentence you to  
4 serve a term of imprisonment of six months  
5 consecutive, for a total term of two and a half years.  
6 You may sit down.

7 Now, Counsel, is there anything else we need to  
8 address?

9 MR. CLAXTON: Nothing from the Crown, thank you, My  
10 Lord.

11 MR. SHARKEY: No, thank you.

12 THE COURT: Ms. Cooper?

13 MS. COOPER: No, sir.

14 THE COURT: All right. Let me make two final  
15 comments. Mr. Shearing, Mr. Bettger, I sincerely hope  
16 that in the coming months you will spend your time by  
17 thinking of how you can put back together your own  
18 lives and the lives of your families. It won't be too  
19 far in the future when you are released, and I hope  
20 that with planning and effort you can regain the  
21 things, the positive things that I heard about you  
22 prior to these incidents.

23 The other thing I sincerely hope is that everyone  
24 can finally start closing this sorry chapter of the  
25 past history of this town. Thank you, Counsel.

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(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

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**Certified Pursuant to Practice Direction #20  
dated December 28, 1987.**

*Laurie Ann Young*  
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**Laurie Ann Young  
Court Reporter**