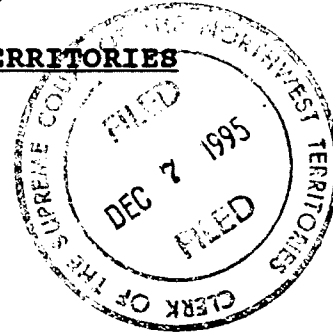
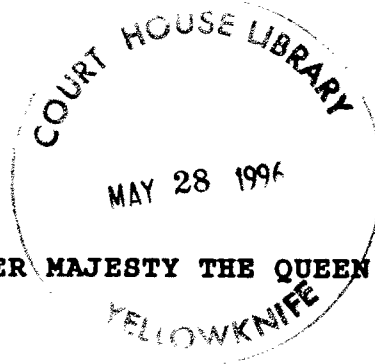


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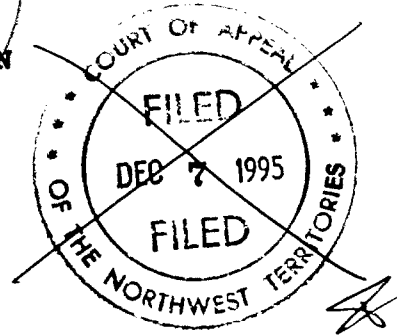
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- vs. -



J M

Transcript of the Oral Reasons for Sentence of The Honourable Mr. Justice J. E. Richard, at Fort Smith in the Northwest Territories, on Wednesday, December 6th, A.D, 1995.

APPEARANCES:

MR. D. CLAXTON:	Counsel for the Crown
MR. D. CROSSIN:	Counsel for the Accused
MR. D. MCKAY:	

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(CHARGED UNDER s. 231(2) CRIMINAL CODE OF CANADA)  
 (CHARGED UNDER s. 233(2) CRIMINAL CODE OF CANADA)  
 (CHARGED UNDER s. 135 CRIMINAL CODE OF CANADA)  
 (CHARGED UNDER s. 148 CRIMINAL CODE OF CANADA)  
 (CHARGED UNDER s. 156 CRIMINAL CODE OF CANADA)

AN ORDER HAS BEEN MADE IN THIS CASE PROHIBITING PUBLICATION OF ANY INFORMATION THAT COULD DISCLOSE THE IDENTITY OF CERTAIN COMPLAINANTS PURSUANT TO s. 486(3) OF THE CRIMINAL CODE

1 THE COURT: J M has been convicted by a  
2 jury of the crime of assault causing bodily harm  
3 contrary to the former Section 231(2) of the Criminal  
4 Code. His crime was committed approximately 25 years  
5 ago here in Fort Smith and his victim was his first  
6 wife I M , now L K .

7 The victim told the jury a story of a very  
8 troubled marriage between she and the offender J  
9 M in the years 1967 to 1971 when they lived  
10 together as man and wife here in Fort Smith with their  
11 five children. There was much alcohol abuse by the  
12 two spouses, much quarreling and arguing, and a great  
13 deal of physical violence in the household.

14 The victim says she left her husband and children  
15 in 1971 and moved away from Fort Smith and she says  
16 she did so of fear for her life.

17 She told the jury of two specific serious assaults  
18 visited upon her by the offender J M in the  
19 time frame 1969 to 1971.

20 In the one instance, she said her then husband was  
21 angry with her because she had been out drinking while  
22 he was out of town and he took her to a basement room,  
23 tied her up, and administered a severe beating upon  
24 her with a board.

25 She says that she suffered painful injuries and  
26 had to stay away from work for a couple of days as a  
27 result.

1           In the second instance, the victim says she was in  
2 attendance at a community dance here in Fort Smith  
3 when her husband arrived in an intoxicated condition.  
4 She says he became angry when she was dancing with  
5 another man and he took her outside of the dance hall  
6 and administered a severe beating upon her to the  
7 point that she lost consciousness and was taken to the  
8 hospital.

9           She says she remained in the hospital for two  
10 weeks and that she suffered severe injuries on that  
11 occasion, including scars that she still has on her  
12 body.

13           Prior to their deliberations, the jury was  
14 instructed that either of these incidents related by  
15 the victim could amount to an offence of assault  
16 causing bodily harm if they accepted that portion of  
17 the victim's evidence.

18           The jury was told that they need only find one  
19 incident of assault causing bodily harm in order to  
20 find Mr. M           guilty of that charge of assault  
21 causing bodily harm; that is, Count No. 1 in the  
22 indictment.

23           Following their deliberations, the jury did find  
24 Mr. M           guilty of Count No. 1; that is, assault  
25 causing bodily harm.

26           In my view, each or either of these assaults  
27 constitutes a serious offence which merits a

1 meaningful sentence in order to give effect to the  
2 important principles of general deterrence and  
3 denunciation. For this reason, I therefore find that  
4 I need not make any particular ruling or determination  
5 as to what it is precisely that the jury decided with  
6 respect to Count No. 1.

7 At the time that J M committed his crime;  
8 that is, in the time period 1969 to 1971, the  
9 Parliament of Canada prohibited this kind of criminal  
10 behaviour by virtue of the former Section 231(2) of  
11 the Criminal Code.

12 That subsection of the Criminal Code read as  
13 follows:

14 Everyone who commits an assault  
15 that causes bodily harm to any person is  
16 guilty of an indictable offence and is  
liable to imprisonment for two years.

17 The maximum sentence for J M 's crime is  
18 therefore two years' imprisonment in a federal  
19 penitentiary in southern Canada.

20 Today, the maximum sentence for the same crime is  
21 ten years' imprisonment in penitentiary.

22 This offender before the Court today is a man of  
23 60 years of age and is a well-known businessman here  
24 in Fort Smith, who has lived in this community for  
25 almost 30 years. He has no criminal record.

26 In my view, Mr. M 's crime was and is a very  
27 serious one. And it is no less so due to the passage

1 of time since its commission.

2 General deterrence and denunciation are the  
3 important principles here.

4 I do not believe that the Court can or should  
5 ignore or minimize the importance of those two  
6 principles simply because the crime was committed in  
7 an era when spousal assault was common-place and was  
8 casually regarded by society as it was then.

9 These two important principles apply to the  
10 sentencing process which is occurring today. These  
11 two principles are aimed at achieving the overall  
12 purpose or objective of the criminal law system which  
13 is the protection of the public today.

14 In my view, a suspended sentence for this serious  
15 crime would not adequately reflect those two important  
16 principles of general deterrence and denunciation.  
17 That kind of disposition today would send the wrong  
18 message to the members of the community and to society  
19 generally.

20 In my view, a meaningful period of incarceration  
21 is required to give effect to the overall purpose of  
22 the criminal law and those principles of sentencing  
23 that I have mentioned.

24 Spousal assault or domestic violence is today  
25 recognized by society, and particularly by people  
26 living in our northern communities, as a serious  
27 social problem, more so than it was in the '60s and

1 '70s.

2 Also, violence against women is today recognized  
3 by all Canadians as a horrific and unacceptable social  
4 aberration which unfortunately, unfortunately, exists  
5 in Canadian society.

6 Canadians are particularly mindful of this  
7 terrible social problem at this time of year on the  
8 sixth anniversary of what has come to be known as the  
9 Montreal massacre.

10 It is only today that J M is being held to  
11 account by society for the serious crime that he  
12 committed a long time ago.

13 I do not agree that these are peculiar  
14 circumstances simply because of the passage of time.  
15 Today is the day of reckoning; today is the day on  
16 which sentence is being imposed.

17 In my view, the societal values of today must  
18 necessarily be reflected in the sentence that is  
19 imposed, within the limits prescribed by the law at  
20 the time of the commission of the offence.

21 Would you please stand now, Mr. M .

22 Mr. M , for the crime that you have committed,  
23 the assault of L K between 1969 and 1971  
24 causing her bodily harm contrary to the former Section  
25 231(2) of the Criminal Code, it is the sentence of  
26 this Court that you be imprisoned for a period of 15  
27 months.

1           And in addition, there will be the statutory \$35  
2           Victim Fine surcharge. Time to pay, 30 days. In  
3           default, one week consecutive.

4           Take a seat, sir.

5           Counsel, is there anything further on this case.

6           MR. CLAXTON:           Just one matter, My Lord. I wonder if  
7           I might have an order for the return of the exhibits  
8           at the end of the expiration period?

9           THE COURT:           Any difficulty?

10          MR. CROSSIN:          No.

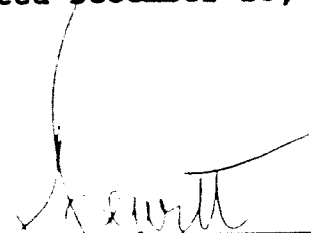
11          THE COURT:          The usual order will go in that  
12          regard.

13                 Before we close Court, I want to commend counsel  
14                 on both sides for their conduct of this very difficult  
15                 case.

16                 So we will close court, Madam Clerk.

17  
18                 (AT WHICH TIME THIS MATTER CONCLUDED)

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

21  
22                                   
23                                 \_\_\_\_\_  
24                                 Lois Hewitt,  
25                                 Court Reporter