

IN THE SUPREME COURT
OF THE
NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN

VS.

FREDDY PUNCH

Reasons for Judgment

and

Judgment by

The Honourable Justice de Weerd

U. Arvanetes, Ms., Appeared for the Crown
S. Shabala, Esq., Appeared for the Defense
P.E. Simonson, Mrs., Court Reporter

Fort Simpson, Northwest Territories

February 14, A.D. 1995

(Charges under Section 271 of the Criminal Code)

1 THE COURT: Freddy Punch, now age 30
2 years, a single man, ordinarily resident in the
3 small community of Trout Lake (population
4 approximately 60) in the Northwest Territories,
5 since birth, is before the Court' this morning for
6 the passing of sentence upon him for the offense
7 of sexual assault.

8 The case is an unusual one in that the
9 assault in question took place in 1987, that is
0 to say, over seven years ago.

1 What is not unusual, however, is the fact
2 that the accused claims to have little, if any,
3 recollection of the events of the assault. He
4 was, as so often happens, intoxicated at the time
5 to a degree which left him with little memory of
6 those events. And, as happens from time to time,
7 it was therefore not until he heard the testimony
8 of his victim at the preliminary inquiry, held
9 some months ago in the Territorial Court, that he
0 was confronted by the realization of what he so
1 cruelly did to her seven long years ago.

2 This is by no means the only case of its
3 kind in the Northwest Territories in which the
4 accused has come to finally accept responsibility
5 for his crime as a result of hearing the victim
6 testify at a preliminary inquiry.

7 Those who, being unfamiliar with such

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1 matters (not having attended regularly as counsel
2 in criminal cases before the courts, and not
3 having heard many such cases as a judge in the
4 place where I sit today), and who now seek to
5 abolish all preliminary inquiries, would do well
6 to ask themselves if the victims of sexual
7 assault will not be put to the anguish of having
8 to give their evidence for the first time before
9 a jury, no doubt with a large crowd of curious
10 spectators in the public gallery, if Parliament
11 should somehow be persuaded to abolish the
12 present system of preliminary inquiries in
13 serious criminal cases.

14 Be that as it may, it remains to note that
15 the plea of "guilty" entered by Mr. Punch to
16 count 2 in the indictment yesterday, while made
17 only on the eve of his scheduled jury trial,
18 would evidently not have been made at all were it
19 not that he had earlier heard his guilt described
20 under oath by his victim at the preliminary
21 inquiry. Without that, it appears that we would
22 today be commencing that trial before a jury, as
23 scheduled, with the victim now being required to
24 testify in the full glare of the publicity of a
25 jury trial, if indeed she were fully able to do
26 so, an ordeal from which she has been mercifully
27 spared by having testified at the preliminary

1 inquiry and - let us not forget - by the "guilty"
2 plea entered by Mr. Punch yesterday.

3 As counsel agree, correctly in my respectful
4 opinion, the offence was nothing less than a
5 major sexual assault, for which the courts in
6 sentencing the offender begin with a starting
7 point or base penalty of three years imprisonment
8 in a penitentiary, adding to or subtracting from
9 that base penalty in order to reflect the
10 aggravating and mitigating circumstances of the
11 situation. Parliament for that matter, has
12 prescribed a maximum sentence of ten years
13 imprisonment for the offence of sexual assault.
14 That maximum is reserved by the Courts for the
15 worst offence of its kind when committed by the
16 worst kind of offender. Mr. Punch is clearly not
17 such an offender. And while all such offences
18 are rightfully looked upon as serious, this is,
19 fortunately, not the most serious offence of its
20 kind to have come before the Court. This is
21 therefore, as counsel rightly agree, not a case
22 for the maximum penalty.

23 That being so, the duty of a sentencing
24 judge in such a case is to determine what penalty
25 short of the maximum would be a just and fitting
26 penalty in all the circumstances. It is as well
27 to note that there is no minimum penalty for this

1 offence under our law. What I must do, therefore,
2 is to bear in mind the recognized principles by
3 which a sentencing judge must be guided. And
4 then, in the light of those principles, I must do
5 my best to craft a sentence which will give
6 effect to those principles in a manner which
7 properly reflects the circumstances of both the
8 offence and the offender.

9 The first principle to be recognized is that
10 the criminal law has as its object the protection
11 of the public, to the extent that this can be
12 accomplished with due respect for the values
13 enshrined in our Canadian Constitution. In other
14 words, the public is entitled to the law's
15 protection in accordance with the principles of
16 fundamental justice.

17 The sentence of the Court must therefore
18 reflect this by upholding the law and by firmly
19 and clearly denouncing those who transgress
20 against it. We call this the principle of
21 repudiation or denunciation. That principle is
22 given effect by the Court's conviction of the
23 offender, which becomes a matter of public
24 record, and of course by the Court's sentence,
25 provided that the sentence is such that it is
26 seen to serve the end of denunciation of the
27 offence.

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1 A closely related principle is that of
2 deterrence, which has a two-fold aspect. First,
3 deterrence of the individual offender. Second,
4 deterrence of others who may be tempted to do as
5 he did. The public (and I say this on the basis
6 of some experience) associates deterrence in this
7 class of case with a lengthy term of
8 imprisonment, as recognized by the starting point
9 or base penalty which I have mentioned.

10 The date of the offence now before the Court
11 and the information provided to me in these
12 proceedings all point, however, to the absence of
13 any repetition of this offence since 1987, or at
14 the latest 1988. This is, thankfully, a strong
15 indicator that there is no longer as great a need
16 for specific or individual deterrence of this
17 offender as there evidently was seven years ago.

18 Courts will also consider, in appropriate
19 cases, the principle of incapacitation - the
20 denial of liberty so as to directly prevent the
21 offender from re-offending. A lesser form of
22 incapacitation is accomplished, in cases of
23 violent crime, by prohibiting an offender from
24 possessing firearms for a period or from driving
25 a motor vehicle for a period; and there are other
26 forms of lesser deprivation of liberty intended
27 to prevent or at least make more difficult any

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1 repetition of the offence. Some forms of
2 probation may have this effect.

3 Contrary to popular belief, prisons are not
4 places where offenders become more
5 penitent - as the name "penitentiary" somewhat
6 misleadingly suggests. Those who have shown no
7 penitence before going to prison rarely show any
8 sign of it either in prison or on their eventual
9 release. In this case, by his "guilty" plea, and
10 by his statement yesterday to the Court, the
11 offender has shown remorse for his crime. He has
12 thus indicated an attitude of penitence and of
13 acceptance of responsibility for his offence.
14 This shows that he realizes that he must undergo
15 punishment for that offence and that he
16 recognizes this is necessary to assure the public
17 that the offence is legally condemned and that
18 justice has been done.

19 There is therefore, in this case, room for a
20 realistic consideration of the offender's
21 eventual rehabilitation and reform. That, after
22 all, would be the public's best guarantee that he
23 is no longer a danger to those like his victim,
24 at the time of the offence, a 15-year-old girl on
25 whom he sexually forced himself, he being then
26 some eight years older than she was, so as to
27 psychologically traumatize her severely with

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1 effects which she still experiences. Both she
2 and he are lifelong inhabitants of Trout Lake. If
3 he is to be released back into that small
4 community after serving his sentence, it will be
5 essential that he shall by then have achieved
6 full rehabilitation and reform or, if that is in
7 any doubt, that his release shall be supervised
8 so as to remove that doubt as far as that may be
9 possible and necessary. The courts have been
10 given certain powers for such purposes, through
11 the use of supervised probation.

12 In cases of the kind before the Court today
13 there is no form of restitution or compensation
14 which the offender can provide to the victim, or
15 which the Court can require him to provide so as
16 to undo the harm done to her by him. And there
17 are limits on what a Court can realistically
18 accomplish by requiring the offender to undertake
19 community service as a way of showing his remorse
20 and of expiating the crime which he committed in
21 1987. Mr. Punch was not permitted to communicate
22 with the victim from his arrest in 1993 up until
23 now. He has indicated a wish to apologize
24 personally to her. He will now be permitted to do
25 so, in the interests of helping her also to come
26 to terms with her trauma. And, if the imposition
27 of some suitable terms of community service can

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1 be incorporated into the sentence, that too may
2 yet be seen to have its value in restoring peace
3 to the community.

4 The Court has been asked by counsel for both
5 the accused and the Crown to make no order under
6 S.100 of the Criminal Code. Given all the
7 circumstances, I make no such order. As a result,
8 Mr. Punch will not be hindered in his pursuit of
9 a living on the land, using firearms, upon his
10 release from imprisonment. He will know now that
11 if he should ever commit another crime of this
12 kind, or any other crime of violence, his use of
13 firearms can be stopped by the Courts, for a
14 minimum of ten years and, if necessary, for life.

15 Counsel are agreed that the Court must, in
16 all the circumstances, sentence Mr. Punch to a
17 term of imprisonment for not less than 2 years
18 less a day, which is just short of a penitentiary
19 sentence, and for not more than 3 years in a
20 penitentiary. I am in respectful agreement with
21 this joint submission of counsel.

22 In coming to that conclusion, I want to make
23 it very clear that the fact of his intoxication
24 at the time of the offence is not a mitigating
25 circumstance in the eyes of the Court. That fact
26 may go some way towards explaining how the
27 offence came to be committed. It is however no

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1 excuse for what happened. If anything, the giving
2 of an alcoholic drink to the victim, who was too
3 young to legally consume or possess liquor, must
4 be regarded as an aggravating feature of the
5 offence. I note also the considerable difference
6 in the ages of the offender and his victim, and
7 her youthful years at the time. The offender's
8 use of deception reflects some forethought on his
9 part. That too is an aggravating feature,
10 removing the element of impulsive spontaneity
11 which might otherwise have been supposed.

12 The fact that the offender has been subject
13 to restrictive conditions on his liberty since
14 his arrest on February 22nd, 1993, almost two
15 years ago, is to be noted. These conditions
16 included a period of 3 months of banishment from
17 Trout Lake, with a further period of months
18 during which he was restricted within Trout Lake.
19 In reckoning his sentence, this fact has to be
20 given a mitigating effect.

21 Taking all the circumstances of the case
22 into account, the sentence of the Court is as
23 follows - would you please stand, Mr. Punch?

- 24 1. You, Freddy Punch, are hereby sentenced
25 to serve a term of imprisonment for two
26 years less a day;
- 27 2. In addition, you shall be bound by a

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1 probation order for a period of 12
2 months, from the time of your release on
3 terms as follows:

4 (a) first, immediately on your release
5 from prison, you shall report to
6 the senior probation officer in
7 the place where you then are, and
8 thereafter, you shall continue to
9 report as required by your
10 probation officer;

11 (b) second, you shall immediately
12 notify the probation officer of
13 any change in your place of
14 residence or your work or
15 employment;

16 (c) third, you shall perform 200 hours
17 of community service work as
18 directed by your probation
19 officer, and always subject to the
20 supervision and approval of your
21 probation officer.

22 Do you understand those conditions, Mr.

23 Punch?

24 MR. PUNCH: Yes.

25 THE COURT: Do you accept them?

26 MR. PUNCH: Yes.

27 THE COURT: Mr. Punch, you are now 30

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1 years of age. You are before the Court as a first
2 offender. You should know that if you should
3 re-offend, you would be facing a much more
4 serious penalty than the Court has imposed today.
5 If, on the other hand, you decide never to make
6 such a serious mistake again in your life, you
7 may in time be able to put this behind you and
8 become a respected and useful member of your home
9 community. The choice is yours. Let me say that
10 you could help yourself by learning to avoid
11 alcohol abuse. I am directing the Clerk to
12 endorse the Warrant of Committal with the Court's
13 recommendation that you be given alcohol
14 counselling and treatment during the term of your
15 imprisonment. You will do well to take that
16 counselling and treatment so that you may avoid
17 any repetition of the behavior that brought you
18 before the Court today. Do you understand?

19 MR. PUNCH: Yes.

20 THE COURT: You may be seated. Is there
21 anything further from the crown side?

22 MS. ARVANETES: No, sir.

23 THE COURT: From the defence?

24 MR. SHABALA: No, my Lord.

25 THE COURT: My compliments to counsel.

26 These cases are always difficult. There is no
27 perfect answer to them. I think you've done as

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much as can be done.

(CONCLUDED)

I, PERRY SIMONSON, Court Reporter, hereby certify that I attended the above-mentioned Examination and took faithful and accurate shorthand notes, and the foregoing is a true and accurate transcript of my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 20th day of February A.D. 1995.

Perry Simonson
 Perry Simonson, C.S.R. (A)
 Court Reporter.

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