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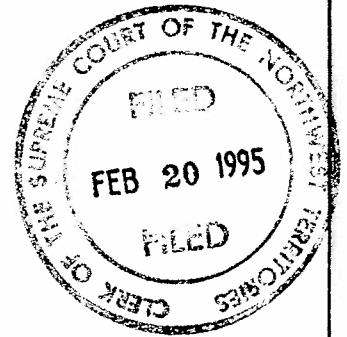
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- VS -

PETER BONNETROUGE



Transcript of the Reasons for Sentence delivered by The Honourable Mr. Justice J.Z. Vertes, sitting at Yellowknife, in the Northwest Territories, on February 16th, A.D., 1995.

APPEARANCES:

MS. L. MINISH-COOPER: Counsel for the Crown
MR. C. REHN: Counsel for the Defence

(CHARGE UNDER SECTION 271 of the CRIMINAL CODE)

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

1 THE COURT: In this particular case, the accused
2 had been placed on trial before judge and jury on a
3 two - count indictment alleging that he, on or about
4 July 15th, 1994, did commit, firstly, a sexual assault
5 on J M , and secondly, a sexual assault on
6 L A F . After the second day of trial,
7 and after the two complainants' testified, the
8 accused, with the Crown's consent, changed his plea to
9 guilty on count 2, that is, the sexual assault on
10 L A P . I am now compelled to sentence
11 him on that charge.

12 The offence of sexual assault, as set out in the
13 Criminal Code, covers a wide variety of behaviour.
14 The Criminal Code, as well, grants me the power to
15 impose a sentence over a wide range from probation to
16 imprisonment for up to 10 years.

17 I think it is fair to say that at the close of
18 the Crown's direct examination of L A (whom I
19 will refer to as simply the "victim"), the theory of
20 the prosecution was that the accused had forcible
21 non-consensual intercourse with the victim. After the
22 cross-examination, however, suffice it to say that
23 considerable doubt had been cast on the issue of
24 consent. Be that as it may though, the prosecution
25 also relies on the fact that the victim was only 13
26 years old at the time of the offence. Therefore
27 consent is immaterial.

1 The Criminal Code provides that where the accused
2 is charged with sexual assault in respect of a person
3 who is under 14 years of age, it is no defence that
4 the person consented to the sexual activity in
5 question. Furthermore, it is no defence that the
6 accused believed that the person was 14 or older,
7 unless he took all reasonable steps to ascertain the
8 person's age.

9 The dividing line of 14 years of age for consent
10 is not based on some strict scientific data or on any
11 assumption as to when a person becomes an adult.
12 People mature at different times; some never. The
13 line is drawn at age 14 because of some general
14 consensus that at that age people should be able to
15 take responsibility for their decisions. There is
16 also a presumption that people younger than 14 are not
17 in a position to give valid consent to sexual
18 activity, since they are in a disproportionate power
19 balance with older people. Simply put it is too easy
20 to take advantage of them.

21 By pleading guilty, the accused has admitted the
22 essential elements of this offence: Sexual intercourse
23 with a person under 14 in a situation where he took no
24 reasonable steps to ascertain her age. The issue of
25 consent or lack thereof is therefore inconsequential
26 for a conviction. The issue of consent, however, is
27 highly relevant on the question of sentence.

1 If this crime is characterized as non-consensual
2 forcible intercourse, "rape" in other words, then it
3 amounts to what the law refers to as a "major sexual
4 assault". The consequence for the accused is a very
5 lengthy term of imprisonment in a penitentiary.

6 On the other hand, if there is an element of
7 consensual activity and an absence of force, then the
8 act is mitigated to such an extent that a significant
9 prison term may be avoided.

10 Any crime of sexual violence deserves to be
11 condemned. But sexual activity that is a crime simply
12 because of the age of one of the participants must be
13 examined closely for its own particular facts.

14 The Court sets stern standards for the protection
15 of young people from abuse. But there is a wide
16 variety of conduct that fits within the spectrum of
17 criminality.

18 A significant factor is the accused's knowledge
19 of the victim's age. If he knew that the victim was
20 under 14 then that is a very aggravating factor. If he
21 honestly thought she was older, but took no steps to
22 verify that, the crime is not quite so serious, but
23 must still be disposed of with a measure of some
24 severity. Beyond the question of knowledge of age,
25 there are other factors such as whether the crime was
26 predatory sexual activity or the result of a natural
27 bond of affection, say, between two adolescents.

1 In this case counsel have left it to me to draw
2 my own conclusions from the evidence adduced at trial.
3 It seems to me this is no different than where there
4 is some factual dispute at a sentencing hearing and
5 evidence is called to resolve that dispute.

6 First of all, it is clear to me, having seen and
7 heard the victim, that the accused could not possibly
8 have believed that she was 14 years old. To my eye
9 she looks much younger. That fact is blameworthy in
10 and of itself. The accused, who looks to be in his
11 mid-twenties, should have exerted a greater degree of
12 self-control and stayed away from this child.

13 I accept as fact that he asked several times how
14 old the victim was, but I also accept that he was told
15 by her that she was only 13. We do not, however, know
16 what he may have been told by J M ..

17 Was his action predatory? I cannot label it as
18 such.

19 There was evidence that he was drinking. He had
20 been seen on previous occasions by the other
21 complainant, J M , who was 18 years old.

22 There was a great deal of evidence that the accused
23 and J were acting friendly towards each other and
24 that generally both girls were having a good time
25 hanging around with him.

26 The accused went to buy some liquor. The two
27 girls went with him. I think a most telling comment

1 was that of Miss M when she said that we (meaning
2 she and L A), and I quote, "wanted to leave
3 because we had a curfew but we wanted to stay because
4 we wanted to drink a little". So they decided to stay
5 with the accused. The victim, L A , stated
6 that she wanted to be where the action was, that she
7 wanted to stay with J and the accused.

8 The victim ended up going to the accused's
9 apartment. She may have thought J was going as
10 well but she found herself alone with him. They sat
11 and talked. They kissed. They went into the bedroom.
12 They lay on the bed. The accused asked her if she had
13 ever engaged in sex before and she told him "yes".
14 They started to take clothes off. Again the accused
15 asked her; "Are you sure you did this before?". She
16 said in Court she was nervous about having sex for the
17 first time. They kissed. They had intercourse.

18 It seems to me that what we have is a young
19 person, partly worried about staying out late because
20 she missed her curfew, partly nervous about having
21 sex, but also partly interested in staying. Human
22 behaviour does not usually fit into neat compartments.
23 It was consensual only as much as an anxious and
24 nervous and partly frightened 13 year-old could
25 consent to anything clearly. I think her judgment was
26 obviously clouded by the anxiety of the situation. So
27 I cannot say that it is purely consensual. I cannot

1 say that she willingly and knowingly agreed to this
2 activity. But of course the legal standard is
3 somewhat more restrictive on me. Strictly as a
4 proposition of law, the farthest I will go is simply
5 to say that nonconsent has not been proven in this
6 case beyond a reasonable doubt.

7 I do not blame the victim for this situation. I
8 blame the accused. He should have realized that she
9 was young and anxious; he should not have given her
10 liquor; and, he should not have taken her up to his
11 apartment. His conduct is very serious and
12 blameworthy, but I cannot say it was predatory.

13 A major sexual assault is not defined simply by
14 the physical nature of the act, but by the overall
15 circumstances of the offence. Here there was no
16 indicia of overt force and the accused was not in a
17 position of trust. Hence I conclude that this offence
18 cannot be characterized as a major sexual assault (as
19 that term has come to be known in law).

20 After the intercourse, the accused asked her if
21 she was hurt because he noticed she was bleeding. He
22 told her to take a shower and gave her clean shorts.
23 He asked if she wanted to sleep on his couch and she
24 did. The next morning he walked her out of the
25 building. So he at least showed some concern for her
26 well-being.

27 All of this I have concluded as fact based on the

1 evidence of the complainant, L A .

2 I need not decide anything on what may have
3 motivated the victim to testify as she did at first.
4 It is obvious to me that she was frightened about what
5 would happen to her because she had not gone home so
6 she told a number of different stories at first. I am
7 satisfied, however, that the evidence she gave at the
8 close of her cross-examination was honest. I am
9 satisfied that it was not prompted simply by a desire
10 to say anything just to get off the witness stand.
11 There were numerous support persons in attendance for
12 her. I believe this part of her testimony was the
13 truth.

14 In this case Crown counsel points to a number of
15 aggravating factors some of which I have already
16 mentioned. The accused was only concerned with
17 satisfying his own desires. He gave no thought to
18 what may have been going through the mind of the
19 victim.

20 The most aggravating factor, however, is the
21 record of past criminal convictions of the accused.

22 Since 1986, when the accused turned 18, he has
23 accumulated approximately 45 convictions. It is hard
24 to see when he has had any time outside of jail. Most
25 of these convictions are property related although
26 there are some assaults and weapons offences. But
27 considering the sentences imposed they all appear to

1 have been relatively minor offences. One related
2 conviction, however, dates from July of 1992 when he
3 was sentenced to one year for break & enter and commit
4 sexual assault.

5 The significance of the record is not so as to
6 punish the accused over again for his past conduct.
7 The record reveals, however, a pattern of conduct and
8 behaviour of the accused. It reveals a great deal
9 about his character. This record is relevant because
10 the significant factor in sentencing is the moral
11 blameworthiness of the offender. If someone stands
12 before the Court as a first offender, convicted of
13 some act that is out of character, then leniency is
14 normally extended. But if someone stands before the
15 Court as a multiple offender, having committed crimes
16 for which he has been punished, then the level of
17 moral blameworthiness has increased significantly.

18 The purpose of the criminal law is the protection
19 of society. This accused has proven himself to be a
20 menace to society. He is, however, (and I must keep
21 this in mind) still young and, by his comments to me,
22 perhaps he is starting to recognize now, and perhaps
23 for the first time, that he will have to change his
24 behaviour if he is to avoid a future like his past.

25 I must try to achieve a balance between the
26 circumstances of the offence and the circumstances of
27 the offender. Were I to sentence him simply on the

1 basis of this offence (without regard to other
2 factors) I believe I would impose a sentence of around
3 one year in jail. With his record of past
4 convictions, however, that sentence could easily be
5 increased to the range of two and-a-half to three
6 years. I must, however, take into account the
7 approximately four months spent in pre-trial custody.
8 Such time is usually credited with some factor greater
9 than one-to-one but, as counsel know, there is no
10 strict mathematical formula.

11 Stand up Mr. Bonnetrouge. Mr. Bonnetrouge, you
12 are 26 years old and it looks to me that for the past
13 eight or nine years you have spent most of your time
14 behind prison bars. Now, you tell me that you have
15 had a lot of anger and problems in your past and I am
16 sure you have, but you are now old enough to know that
17 only you can control your behaviour and only you can
18 change your behaviour. And now that you do have a
19 child and if, as you say, you don't want to see your
20 child grow up the same way you have, then it is your
21 responsibility to take charge of your life and to
22 change your behaviour, because if you don't, then with
23 this record (and I'm sure you realize it), every time
24 you even spit on the sidewalk you are going to get
25 hauled off to jail. It is just going to be a
26 continuing process, and pretty soon you are going to
27 find yourself in a southern penitentiary serving big

1 time and believe me, that is not the place you want to
2 be.

3 The sentence of this Court is that you serve a
4 term of imprisonment of two years less one day. I
5 decline to make any Section 100 order. I decline to
6 impose any fine surcharge. You can sit down.

7 Now counsel, is there anything that we need to
8 address; in particular count 1?

9 MS. MINISH-COOPER: Yes My Lord, with respect to count 1,
10 the Crown would enter a stay of proceedings, and I
11 will file a formal stay in due course.

12 THE COURT: Thank you counsel. Anything else that
13 we need to address with respect to this case?


14 MR. REHN: If I might have a moment, My Lord?

15 MS. MINISH-COOPER: I don't believe there are any exhibits
16 either in the custody of the Court with respect to the
17 preliminary inquiry on this trial sir that need to be
18 addressed, so I don't have any other applications or
19 matters to be requested of the Court at this time.

20 THE COURT: I want to express my appreciation for
21 your submissions both of you, and for the way you
22 resolved the matter. We will adjourn.

23 (AT WHICH TIME PROCEEDINGS WERE CONCLUDED)

24
25 Certified Pursuant to Practice Direction #20
dated December 28, 1987,

26 
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Karen Steer
Court Reporter