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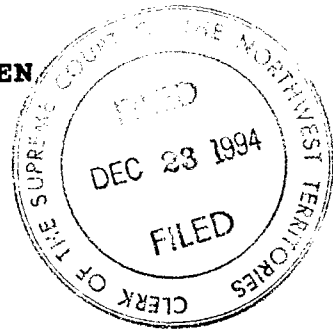
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DONALD GORDON MERCREDI



Transcript of the Reasons for Sentence of the Honourable
Mr. Justice J. Z. Vertes, sitting at Fort Smith, in the
Northwest Territories, on December 21, A. D. 1994.

APPEARANCES:

MR. L. ROSE

On behalf of the Crown

MR. L. SEBERT

On behalf of the Defence

1 THE COURT:

I just wanted to review my notes. The
2 accused has been convicted after a trial by a jury on
3 a charge of sexual assault occurring here in Fort
4 Smith on September 4th, 1993. The facts of this case
5 clearly reveal what has come to be termed a "major"
6 sexual assault.

7 The complainant, who is now 23 years old, was from
8 Coppermine. She had just arrived in Fort Smith to
9 attend school at Arctic College. She was out drinking
10 with some friends and ran into the accused and his
11 common-law wife (who is also from the Arctic coast and
12 apparently knows the complainant's family). The
13 complainant and the accused's wife went to the
14 accused's home after the bar closed. The accused came
15 home shortly thereafter. The complainant left the
16 house, trying to find her way back to the school
17 residence, when the accused came after her. She tried
18 to run down the street away from him but he caught up
19 to her, dragged her off to some bushes, and raped her.
20 Afterwards, he led her by the arm back to his house.
21 The complainant said she went back because she was
22 scared and in shock and did not know what to do. Once
23 she got back to the house she quickly left and then
24 managed to get help. The crime was reported
25 immediately to the police.

26 At trial the accused did not deny that he had
27 sexual relations with the complainant. He said

1 however, that she engaged in sexual activity willingly
2 with him. He testified that she flirted with him;
3 that his wife became angry with the complainant and
4 told her to get out; that his wife, notwithstanding
5 her anger at the flirting, asked him to walk the
6 complainant home; that once outside he and the
7 complainant went into a shed behind the house where
8 they had consensual intercourse; and, that the
9 complainant got angry at him when he would not walk
10 her all the way home. The accused's wife corroborated
11 his testimony as to what allegedly occurred in the
12 house.

13 The case obviously turned on credibility and the
14 jury, just as obviously, rejected the version of
15 events given by the accused and his wife. To my mind,
16 and for what it is worth, they were right to do so.
17 It was open to conclude that the evidence of both the
18 accused and his wife was a deliberate concoction meant
19 to deceive the jury.

20 In the case of R v Sandercock, (1985) 22
21 C.C.C.(3d)79, the Alberta Court of Appeal described
22 the archetypical case of major sexual assault as one
23 where a person by violence or threat of violence,
24 forces an adult victim to submit to sexual activity of
25 a sort or intensity such that a reasonable person
26 would know beforehand that the victim would suffer
27 lasting emotional injury. That emotional injury is

1 generally something that can be inferred from the very
2 nature of the assault and the violation of the
3 personal integrity of the victim. The fact that a
4 victim may have been less than careful for her own
5 well-being, say by the consumption of alcohol, is not
6 a relevant factor.

7 The Sandercock decision, a decision that has been
8 adopted and followed by the courts of this and other
9 jurisdictions, sets a starting point of three years
10 imprisonment for a major sexual assault assuming a
11 crime which is not premeditated and a mature accused
12 with previous good character and no criminal record.
13 The court then must consider the aggravating and
14 mitigating circumstances of the specific case so as to
15 adjust up or down from that starting point.

16 In this case I am prepared to consider the crime
17 as being unpremeditated. The accused's consumption of
18 alcohol, while certainly not a mitigating factor, and
19 the facts of the case suggest a spontaneity which
20 lacks a high degree of planning or premeditation.

21 The accused is a mature man. He is now 30 years
22 old. He has been living in a common law relationship
23 for over four years. He had a grade 12 education and,
24 as I heard during the trial, a chance to gain further
25 education. He has had a variety of jobs.

26 The accused does have a criminal record but I
27 regard it as of minimal relevance. He was convicted

1 twice of assault (in 1984 and 1990) and twice of
2 impaired driving (in 1986 and 1990). There is nothing
3 in this record or in his background to suggest any
4 pattern or indication of predatory sexual misconduct.

5 So, in my opinion, this case meets the criteria
6 for the starting point approach. This is a major
7 sexual assault, which is not premeditated, and we have
8 a mature accused with previous good character and a
9 minimal record.

10 The particularly aggravating factors are the
11 violence with which the act was committed and the fact
12 that the accused took advantage of someone who was in
13 an obviously intoxicated condition, a newcomer to this
14 town, who was relying on his wife's hospitality at
15 that time.

16 Unfortunately there are no mitigating factors.
17 There is a complete lack of remorse or acknowledgement
18 of responsibility. Even before being sentenced, the
19 comment from the accused was that "it was her story
20 against mine and I lost". Now I recognize that every
21 accused person has the right to maintain his
22 innocence. I also recognize that it would be
23 inconsistent and illogical for the accused to now say
24 he was sorry for something which he denied under oath
25 doing. So I cannot and I do not penalize him more for
26 his lack of remorse. It is simply that this factor,
27 which is usually the only mitigating factor, is not

1 available to him as a significant factor in reducing
2 the sentence.

3 In sentencing for crimes of sexual violence, the
4 guiding principles must be deterrence of this and
5 other individuals, protection of this victim and other
6 potential victims, and denunciation on behalf of
7 society of the accused's behaviour.

8 Please stand up, Mr. Mercredi. Taking all of
9 these factors into account, I hereby sentence you to a
10 term of imprisonment of three and half years. You may
11 sit down.

12 Under the circumstances, there will be no
13 surcharge. Are there any comments with respect to a
14 firearm prohibition, Mr. Rose?

15 MR. ROSE: It is mandatory, sir.

16 THE COURT: What is the mandatory term?

17 MR. ROSE: Ten years, sir.

18 THE COURT: Ten years for the first time?

19 MR. ROSE: Yes, it is now.

20 THE COURT: Mr. Sebert, do you have any comments?

21 MR. SEBERT: No, that is my understanding.

22 THE COURT: As I am required by law to do, because
23 this is a crime of violence, I hereby impose an order
24 prohibiting the accused from having in his possession
25 any firearms, or explosives or ammunition for a period
26 of 10 years from the date of his release.

27 (AT WHICH TIME THIS MATTER WAS CONCLUDED)

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



Loretta Mott
Court Reporter