

CR 02753

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- VS -

ARCHIE EYAKFWO

Transcript of the Reasons for Sentence delivered by The Honourable Mr. Justice J.Z. Vertes, sitting at Yellowknife, in the Northwest Territories, on February 21st, A.D., 1995.

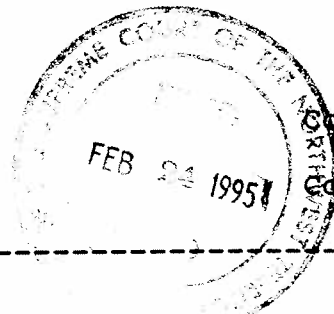
APPEARANCES:

MS. S. Bour:

Counsel for the Crown

MR. G. McLaren:

Counsel for the Defendant



(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:

2 Archie Eyakfwo has entered a plea of
3 guilt to a charge of sexual assault. The plea came
4 shortly before his trial was scheduled to start.

5 On the evening of June 14th, 1994, in
6 Yellowknife, the accused enticed the victim to go with
7 him to get some food. While walking along a wooded
8 path, he jumped the victim and forced her to the
9 ground. She managed to fight him off but he forced
10 her down again and attempted to rape her. She again
11 managed to fight him off, at which point they again
12 struggled. The accused then grabbed the victim's
13 purse and ran off. He was arrested a few hours later
14 when he attempted to cash a cheque that was in the
15 purse.

16 The accused is 29 years old. He is from Lac La
17 Martre and his family has been described as one that
18 lives in the traditional manner of the Dogrib people.
19 I note that his elderly mother was in attendance here
20 in Court and I think he should feel grateful for this
21 sign of support. I am told that he also has a
22 five-year-old daughter from a common-law relationship.

23 The accused has a lengthy record of criminal
24 convictions. Between 1982 and 1993 he was convicted
25 of 27 criminal offences. Most of these are
26 property-related crimes but he does have some crimes
27 reflecting personal violence. His longest sentence
was one of two years less one day for break & enter

1 and commit robbery in 1990. At the time he committed
2 the present offence in June of 1994 he was on
3 probation.

4 Counsel for the accused argues that this man's
5 history and personal circumstances are such as to
6 warrant the structuring of a disposition that would
7 break the cycle of crime in which the accused has
8 found himself for the past 12 years.

9 I agree that the Court can, where the
10 circumstances call for it, take steps to impose a
11 sentence with a view to breaking the cycle of crime.
12 The goal of sentencing is to protect society. The
13 rehabilitation of a repeat offender, if successful,
14 would enhance the achievement of that goal.

15 Counsel says that the accused suffers from
16 serious cognitive deficits so as to cause him to be
17 unaware of the full implications of what he does or
18 why he does things. He has referred me to two
19 reports, one a psychological assessment by Mr. Don
20 Bosson dated July 6th, 1994, and the other a
21 psychiatric report by Dr. Robert Clemmey dated
22 November 3rd, 1994. These reports were apparently
23 prepared to enable the lower Court to determine the
24 accused's ability to instruct counsel and his fitness
25 to plead.

26 There is no question about the accused's fitness
27 to stand trial. Indeed my reading of these reports

1 supports a somewhat different view of the accused than
2 that conveyed by his counsel.

3 Tests revealed that the accused has a low level
4 of intelligence and analytical skill. He responds
5 reflexively with little understanding of his own
6 motivations. There are, however, no signs of
7 pathological disorders or neurological or physical
8 problems. He is apparently full of self-pity and
9 blames external forces for his problems. But both
10 reports identify a significant manipulative aspect to
11 his character. Dr. Clemmey sums up his report as
12 follows:

13 "Even if there be a mild degree of damage
14 to Mr. Eyakfwo's brain consequent upon
15 substance abuse, I have not seen evidence
16 that it materially affects his abilities
17 to effect careful and variably subtle,
18 though not unintelligent, manipulations
19 of others in his own self-interest.
20 Even though, as Mr. Eldon Bosson has
21 noted in his report, Eyakfwo's
22 performance on a relatively culturally
23 unbiased test of formal intelligence
24 appears low, he is nevertheless clearly
25 able to understand enough of what is
26 going on around him to cope quite well
27 in the world, and he is well able to
understand the significance of his
actions upon other people if he takes
the trouble to think about it."

23 I also note the comment by Mr. Bosson that there
24 is a "continued risk of him harming others".

25 I accept that the accused has a history of
26 substance abuse and that in the past year he has at
27 least attempted to put alcohol use behind him. This

1 raises another problem in this case. Defence counsel
2 submits that the accused should be given credit for
3 bringing his alcohol abuse under control. He also
4 says, however, that the accused was sober when he
5 committed this crime. Is this fact mitigating or
6 aggravating?

7 Ordinarily the fact that someone is intoxicated
8 when they commit a crime is said to show a lack of
9 planning -- a certain degree of impulsiveness. If
10 there is evidence of planning, then that is a serious
11 aggravating factor.

12 Here the accused enticed the victim to go with
13 him by telling her some story. He led her by the
14 wooded path. He jumped her. This suggests some
15 degree of planning and premeditation on his part.
16 That is reinforced by the fact of his sobriety. It
17 also fits with the analysis provided by Dr. Clemmey
18 and Mr. Bosson.

19 The manipulative aspect of the accused's
20 behaviour is also reflected by the fact that he made
21 up some false story when he was arrested.

22 As I said before, I recognize that there may be
23 cases where a normally severe prison sentence is
24 mitigated by a rehabilitative programme in the hope of
25 breaking a cycle of crime. But here there are no
26 indicators that such a programme can be put in place.
27 There are no indicators of any personal overwhelming

1 desire to follow up on such programmes. I am told
2 that there are people willing to work with the accused
3 in his home community. I am sure there are but
4 unfortunately they have not come forward with any
5 proposals nor are there any constructive programmes
6 suggested to me. The Court is unable to make up some
7 structured programme out of thin air. Furthermore, we
8 are dealing here with a serious crime of personal
9 violence by a man with a lengthy record and without
10 any assurance that he poses no risk to the personal
11 safety of others. I must therefore put a lower
12 priority on personal rehabilitation.

13 Every sentence should reflect the gravity of the
14 offence and the degree of responsibility of the
15 offender. Here we have a crime of personal violence
16 involving an attempted rape. Crown counsel calls it a
17 "major sexual assault" as that term is known in the
18 jurisprudence. The characterization of this crime as
19 a major sexual assault does not depend on the
20 particular sexual activity in question. It depends
21 more on the overall circumstances of the offence and
22 the evident blameworthiness of the offender. Based on
23 those factors, I have concluded that this crime is
24 indeed a major sexual assault.

25 There is a high degree of violence over and above
26 the inherent violence of any invasion of one's bodily
27 integrity. The act continued over a period of time.

1 It was not momentary and impulsive and I have already
2 commented on what I believe are aspects of planning.
3 Furthermore, the accused has a lengthy criminal record
4 and was on probation at the time.

5 The only mitigating circumstance is the guilty
6 plea. I give him some credit for that even though it
7 comes late in the proceedings. The victim at least
8 did not have to testify again and the public was
9 spared the expense of a full trial. I also consider
10 the guilty plea as at least an indicator of remorse
11 and self-responsibility.

12 Taking all of these factors into account I think
13 an appropriate sentence could be in excess of four
14 years imprisonment. I must however also take into
15 account the over eight months spent by the accused in
16 pre-trial custody. This remand time, as counsel know,
17 is usually credited with more time than on a strict
18 one-to-one basis but there is no rigid mathematical
19 formula.

20 Stand up Mr. Eyakfwo. Mr. Eyakfwo, at your age
21 and with your record of criminal convictions, there
22 are only going to be a few more opportunities left for
23 you to turn your life around. Do you understand what
24 I am saying? Now, I must impose a lengthy term of
25 imprisonment for this crime, but I hope that you, in
26 conjunction with the correctional authorities, will
27 take the time during your imprisonment, and will put

1 in a sincere effort to upgrade your education, upgrade
2 your skills, work skills, life skills, so that when
3 you are released -- and you will be released in the
4 near future -- but when you are released, that you
5 will follow through on what you told me about trying
6 to be an upstanding member of your community once
7 again.

8 It is the sentence of this Court that you serve a
9 term of imprisonment of three years. In addition,
10 there will be a firearm prohibition under Section 100
11 for a period of 10 years. There will be no fine
12 surcharge, under the circumstances. You can have a
13 seat Mr. Eyakfwo.

14 Now counsel, I am not going to make any
15 recommendation as to where Mr. Eyakfwo should serve
16 his sentence. I think the correctional authorities
17 are in the best position to determine that, having
18 regard to his needs and what programmes may be
19 available in the correctional service to better assist
20 him in terms of re-integration back into society. I
21 recognize his life-long association with this area. I
22 recognize his cultural roots in the area, his specific
23 language problems, and I hope that the correctional
24 authorities will take that into account so that he is
25 not unduly cut off from the ability to have contact
26 with his family.

27 So with that view in mind, I will direct, as in

1 the usual course, that a copy of the transcript of my
2 remarks, together with copies of the exhibits be sent
3 to the correctional authorities and to the solicitor
4 general's office. There are representatives here in
5 Yellowknife. I think this is part of the normal
6 routine, in any event, and that they give close and
7 early attention to where would be the most appropriate
8 location for Mr. Eyakfwo to serve his sentence.

9 Is there anything else we need to address
10 counsel?

11 MS. BOUR: No, I don't believe so, My Lord.

12 MR. McLAREN: No, My Lord.

13 THE COURT: Very well then. Ms. Bour, I take it
14 you will file a formal stay of proceedings on count 2?

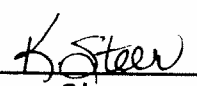
15 MS. BOUR: Yes, sir.

16 THE COURT: In addition, for the record, there
17 will be an order banning publication of the identity
18 of the complainant in this matter, as well as any of
19 the evidence that might identify her.

20 Thank you counsel. If there is nothing further,
21 we will close Court.

22 (AT WHICH TIME PROCEEDINGS CONCLUDED)

23
24 Certified Pursuant to Practice Direction #20
dated December 28, 1987.

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Karen Steer,
Court Reporter