

CR 02726

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WILLIAM GEORGE BAIN

Transcript of the Oral Reasons for Sentence of The
Honourable Mr. Justice J. Z. Vertes, in Yellowknife,
in the Northwest Territories, on the 27th day of
January, A.D., 1995.

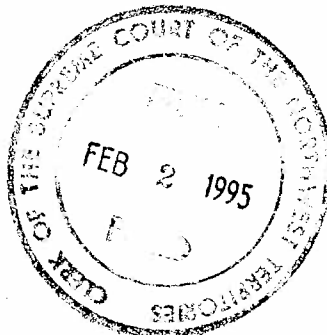
APPEARANCES:

Mr. L. Rose:

Mr. G. Watt:

For the Crown

For the Accused



1 THE COURT:

2 William George Bain has entered a plea
3 of guilty to a charge of common assault which occurred
4 on September 13, 1994 here in the City of Yellowknife.

5 The victim of the assault is a woman with whom Mr.
6 Bain has had what has been described as an on again,
7 off again commonlaw relationship since 1988, but I am
8 told that at the time of the assault they were not
9 living together.

10 There was quite a bit of time spent arguing over
11 the actual facts making up the assault charge. I
12 don't think it would be worthwhile for me to go over
13 the minutia of that dispute. Suffice it to say that I
14 am satisfied that the assault arose out of an argument
15 which escalated into an altercation, which then
16 escalated into pushing and shoving. And then, as I
17 heard from some independent witnesses, at one point,
18 it appeared to the independent witnesses, that Mr.
19 Bain made a kicking motion at the victim while she was
20 lying on the ground.

21 There were no injuries suffered by the victim and
22 that is self-evident from the fact that he was only
23 charged with common assault as opposed to anything
24 more serious.

25 The Crown proceeded by way of indictment on this
26 charge and, at first blush, even taking the facts at
27 their most aggravating scenerio, one could well ask
why. The answer was quickly forthcoming.

1

2 Mr. Bain, while he is 36 years of age, has
3 accumulated a criminal record of over 40 convictions
4 from 1975 to 1994. Many of them are property-related,
5 many of them are drug-related. There are some crimes
6 of violence, however. Most significantly, there are
7 at least three prior convictions for crimes of
8 violence against the same victim. These include
9 assault, assault with a weapon, and uttering a threat --
10 uttering a threat to cause serious bodily harm. That
11 last offence was disposed of in Territorial Court upon
12 a guilty plea in March of 1994 at which time he was
13 sentenced to serve a period of six months in jail.

14 It seems to me that it should be self-evident that
15 the major concerns in sentencing in a situation such
16 as this are not over the particular details of the
17 assault necessarily, because after all it is a common
18 assault, the major concerns should be how do we
19 address what has been apparently a life-long pattern
20 of criminal behavior? How do we either deter Mr. Bain
21 from this type of conduct or give some recognition of
22 any efforts at rehabilitation.

23 The simple knee-jerk reaction would be to say,
24 well, this is an assault arising from a domestic
25 relationship which is always viewed seriously. This
26 is an assault committed by a man who has been before
27 the courts more times than can be counted and by a man
who has been convicted of crimes of violence against

1 the same victim. The obvious reaction, it should be
2 obvious to anyone, is that he's going to be sent away
3 to jail for a long period of time because of that.

4 Now the assault itself, in and of itself, I would
5 not categorize as a serious assault. I think any
6 objective view of it would be that it's not
7 necessarily at the most serious end of possible
8 assaults, but combined with the record and the past
9 conduct, it is a serious sentencing matter.

10 And that's why I think any judge, in my position,
11 would find it far more helpful to hear, as I did hear
12 in this situation, from the accused about what has
13 been happening since his most recent incarceration; to
14 hear from the Crown as to their reaction to the
15 accused's own words and their assessment of the
16 situation; and to hear from the defence, defence
17 counsel, and especially to be provided with these
18 letters from people who have dealt with Mr. Bain over
19 the past year. That, to me, is far more helpful than
20 worrying about some of the exact details because with
21 this record with the victim, Mr. Bain was facing a
22 serious period of incarceration in any event.

23 So here we have to balance the need for
24 deterrence, both personal and general, with the
25 question of whether there is any chance of
26 rehabilitation, or whether the simple knee-jerk
27 reaction of locking up Mr. Bain for a lengthy period

1 of time and then hoping for the best afterwards is the
2 only thing that will work.

3 The primary goal, as Mr. Rose has said, the
4 primary goal of the criminal law is the protection of
5 the public. Ms. Doctor deserves protection, the
6 public generally deserves protection from someone who
7 has engaged in this type of criminal activity over the
8 years.

9 But as I stated during the submissions, I too was
10 impressed by Mr. Bain's evidence under oath here at
11 the sentencing hearing. It seems to me that he spoke
12 quite knowledgeably about what he has to do to break
13 this cycle of criminal behavior. It seems to me that
14 he's aware that he's going to have to take some
15 serious steps both to control his emotions, to change
16 his emotional outlook as it were, to change his
17 behavior patterns, to rely more on persuasion than
18 aggression, perhaps to change his way of life and even
19 the place where he wants to live.

20 Self-awareness is a start to rehabilitation. I
21 was, as I said, pretty impressed by Mr. Bain's
22 expressions of self-awareness. How seriously they
23 will be followed, how serious his intentions are to
24 reform his life, how much effort he puts into it is
25 really only up to him.

26 But, in my view, incarcerating him now for an
27 excessively lengthy period of time simply because of

1 his record, simply because of the nature of the
2 offence, may undermine whatever efforts Mr. Bain is
3 trying to do now.

4 If I were to look at this offence and look at the
5 criminal record, I would have to say that an
6 appropriate sentence, taking all circumstances into
7 account, including the fact that this is a crime of
8 violence arising essentially out of a domestic
9 relationship, that this is a crime of violence by a
10 repeat offender and against a victim who has been
11 victimized previously, I would have to say that an
12 appropriate sentence could be anywhere in the range of
13 10 to 12 months.

14 Now Mr. Bain has served on remand, strictly on
15 remand, a little over four months. He is obviously
16 entitled to credit for that. And as is the normal
17 practice in the courts, he is entitled to credit at
18 more than on a one-to-one ratio. I am not going to
19 say what that ratio should be because it varies from
20 case to case. Be that as it may, certainly I want to
21 give him credit for far more than the over four months
22 that he has already served in remand time.

23 I might, after hearing everything that I have
24 heard, have been inclined to release him today or
25 within a matter of days, but I am not going to do
26 that. I'm going to impose a further period of
27 incarceration but it will be relatively brief and I

1 want to explain why I am doing it primarily.

2 The main reason I am doing this, why I'm imposing
3 a further period of incarceration is because I want to
4 make a strong recommendation, and Mr. Clerk I want you
5 to endorse this on the Warrant of Committal, I want to
6 make a strong recommendation to the authorities at the
7 Yellowknife Correctional Center and to the
8 Classification Personnel and the counsellors there,
9 that they use their best efforts during the period
10 that Mr. Bain continues to be incarcerated, to work
11 with him, to devise some ongoing programs for him, to
12 either get him into some long-term rehabilitation
13 treatment program at some alcohol and drug addiction
14 service, or get him into some ongoing counselling,
15 whatever may be best. But I think Mr. Bain, in
16 working with these people, should have some time to
17 devise that.

18 Because, Mr. Bain, I don't think it would
19 necessarily be in your best interest if I were to
20 spring you loose on the street here in Yellowknife
21 today. I'm taking you at your word, sir, that you're
22 quite serious about changing your life. You're old
23 enough, and if you don't take the steps now to do it,
24 then the only way you're going to change your life is
25 eventually if you burn out.

26 So, if I listen to what you had to say, you sound
27 like an intelligent man to me and someone who is aware

1 of what needs to be done. So I'm hoping that over the
2 course of the next 30 days you and the people out at
3 Y.C.C. will be able to devise some ongoing program for
4 you so that when they do turp you loose, that you'll
5 have something to hold onto, something to go to.

6 So, I am imposing a term of imprisonment of 30
7 days from today's date. That's taking into account
8 the remand time and all of the other factors that have
9 been mentioned to me.

10 I am also imposing a period of probation for 12
11 months. The terms of that probation are that you are
12 to keep the peace and be of good behavior. You are to
13 report immediately to a probation officer upon your
14 release and continue to report as directed by the
15 probation office. You are to participate in any and
16 every counselling or treatment program as recommended
17 by your probation officer, and you are to abstain
18 absolutely from the consumption or possession of
19 alcohol or drugs and you are to comply with a demand
20 for a breath sample at any time from a peace officer.

21 Now that condition about absolute abstention, Mr.
22 Bain, is going to hang like a hammer over your head.
23 If you go into the Gold Range and you hang around with
24 the same people you hang around with, you have a beer,
25 you walk out and a policeman sees you, they can spring
26 you. It's that simple. They can pull the pin on your
27 freedom. You're old enough to control your own

1 behavior now, so you'll have that hammer hanging over
2 your head.

3 And I hope that you will take advantage of
4 whatever treatment programs and other programs will be
5 made available to you because otherwise, all that's
6 going to happen -- and you know it, you don't need a
7 lecture from me, you've been through this for the last
8 25 years or so, all that's going to happen is you're
9 going to end up back in court and you're just going to
10 get tossed into jail again and waste your time. I
11 hope that's not the way you want to spend the rest of
12 your life.

13 Is there anything else we need to address?

14 MR. WATT: No, My Lord.

15 MR. ROSE: Not from the Crown's point of view, My
16 Lord.

17 THE COURT: Thank you, gentlemen.

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


Sandra Burns
Court Reporter