

CR 02916

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- VS -

JASON DRYBONE

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Transcript of the Reasons for Sentence delivered by The Honourable Mr. Justice M.M. de Weerdt, sitting at Rae-Edzo, in the Northwest Territories, on June 27th, A.D., 1995.

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APPEARANCES:

MR. J.A. MacDONALD: Counsel for the Crown  
MR. J. BRYDON: Counsel for the Accused

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(CHARGE UNDER SECTION 266 OF THE CRIMINAL CODE)

1 THE COURT:

2 This Crown sentence appeal against a  
3 sentence of probation for one year on conviction of a  
4 common assault on March 30th, this year, here in  
5 Rae-Edzo raises questions which this Court is not in a  
6 position to resolve, being bound as it is by law which  
7 has been declared by the higher Court namely the Court  
8 of Appeal. The offence in question is the third  
9 assault of which this respondent, Jason Drybone, has  
10 been convicted. The previous one was in 1992 and he  
11 was sentenced to serve two months in jail on that  
12 occasion. Whatever the effect of that may have been  
13 on him, it obviously was insufficient to prevent him  
14 from drinking and assaulting his spouse on the  
15 occasion now before the Court.

16 Some would say then that the sentence has been  
17 shown to be ineffective or counter-productive or that  
18 jail does not work and so forth. This Court does not  
19 take the view that jail is the answer to everything  
20 and at times it is not perhaps the answer to anything.  
21 However, that is a tool provided by parliament to the  
22 Court. It is one of the tools that the Court must  
23 consider in sentencing.

24 Where we have an offence of violence, a third  
25 offence, we are looking at a sentence which will carry  
26 a message to the public. The message which goes out  
27 should not be that you will be easily forgiven for  
this and that you will be able to work your way out of

1 unpleasant results like jail time if you then promise  
2 to be a good person and try and do better in the  
3 future. It is too late for that when you come to your  
4 third offence. If this were the first offence, I  
5 would place far greater weight on what Mr. Brydon has  
6 said, because then with a relatively young offender we  
7 would put rehabilitation and reform much higher on the  
8 list of things we are trying to accomplish.

9 What we are trying to accomplish now, apart from  
10 telling you Mr. Drybone that longer and longer periods  
11 of jail await if you should ever do this again, we are  
12 also telling other men in the community, or women for  
13 that matter too, that should they commit offences of  
14 this kind, certainly repeat offences, the Courts will  
15 feel that they have no choice but to impose a term of  
16 imprisonment. So, I accept what the Crown has said  
17 about that and the only question is what should be the  
18 appropriate term of imprisonment to impose. There was  
19 a plea of guilty in this case. It was offered at the  
20 earliest opportunity. There has been a letter filed  
21 from the victim of the offence indicating that she  
22 does not want Mr. Drybone to go to prison and that she  
23 feels they can work things out together. That's very  
24 hopeful for Mr. Drybone doing that very thing.

25 There is also what I have been told by Crown and  
26 defence counsel about what Mr. Drybone has been doing.  
27 He has been doing well on probation. He has been

1 taking a hold of his life and has been grappling with  
2 the problem that he faces in abusing alcohol. That is  
3 to Mr. Drybone's credit and I will accordingly reduce  
4 the sentence from that which otherwise I would have  
5 felt I had to impose.

6 But for these three features in mitigation, I  
7 would be imposing a sentence of six months  
8 imprisonment with additional probation. Also, I see  
9 the probation that was imposed as being useful and an  
10 appropriate part of the sentence which should be  
11 served. That then will continue from the date of Mr.  
12 Drybone's release from prison.

13 The Crown has asked today for a sentence ranging  
14 between four and six months, as indeed the Crown did,  
15 when it appeared before the Justice of the Peace.

16 As I have mentioned, quite a lot has happened in  
17 the meantime. Mr. Drybone has shown that he is a good  
18 candidate for reform. And so I am going to give  
19 something less than the Crown is asking and it will be  
20 a sentence of three months imprisonment. Would you  
21 please stand Mr. Drybones? Before that is recorded,  
22 is there anything that you wish to say?

23 THE ACCUSED: Yes, I went to the treatment. I  
24 didn't have to have problems, now I do, I got a  
25 problem, we are doing great me and my wife and the  
26 kids until Sandy MacDonald has appealed and trys to  
27 put me behind bars this summer. I worked for

1           forestries and he puts me behind bars and I miss the  
2           job and I'm not able to support my family. I don't  
3           want to miss the job. I love my kids and my wife  
4           and --

5       THE COURT:                Mr. Drybones you are a young man and  
6           you are taking steps to change whatever it was that  
7           caused you to do this. I think you are intelligent  
8           enough to realize that you are going to jail not just  
9           because Mr. MacDonald is asking me to send you there,  
10          not just because the constable arrested you and  
11          brought you before a Court, but basically you are  
12          going there for what you did. Can you understand that  
13          and accept that it is a question of your accepting  
14          responsibility for your life?

15       THE ACCUSED:            I know what I did was wrong because I  
16           had problem with alcohol and I'm doing good right now  
17           since I came back from the treatment center and I only  
18           have two more months to go back for. Until then I  
19           want to work.

20       THE COURT:                I am going to make two recommendations  
21           which I am going to ask the Clerk to put on the  
22           warrant of your committal:

23                First, that you be given every opportunity to take  
24                advantage of counselling and treatment for any alcohol  
25                problem that you may have.

26                Second, that you be given every consideration for  
27                early day parole. That is the best I can do Mr.

1 Drybone. Much as I regret it, I cannot do better than  
2 that. Is there anything you wish to add?

3 THE ACCUSED: I just want to work for my family and  
4 support them. That's all I want to say.

5 THE COURT: Of course you do and that is to your  
6 credit. You will have the opportunity in the meantime  
7 to think about your life and to make up your mind  
8 never ever to have to come back to Court for this kind  
9 of thing again. All right, you may be seated.

10 (AT WHICH TIME PROCEEDINGS CONCLUDED)

11  
12 Certified Pursuant to Practice Direction #20  
dated December 28, 1987.

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Karen Steer,  
17 Court Reporter  
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