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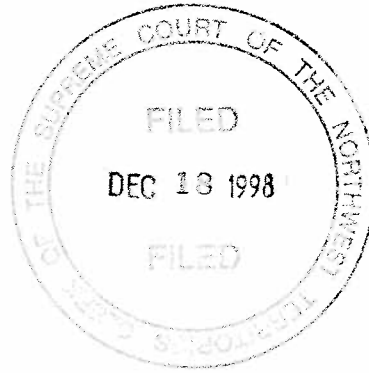
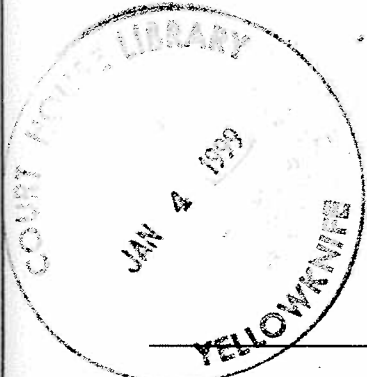
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

F C



Transcript of the Oral Reasons for Sentence by The Honourable Justice J.E. Richard, at Fort Good Hope in the Northwest Territories, on Tuesday, December 15th A.D., 1998.

APPEARANCES:

Ms. L. Colton: Counsel for the Crown
Mr. H. Latimer: Counsel for the Accused

Charge under s. 271 Criminal Code of Canada

**Ban on Publication of Complainant / Witness
Pursuant to Section 486 of the Criminal Code**

1 THE COURT: Before I commence with the
2 sentencing of F C , I just want to confirm that
3 there is a court order prohibiting the publication or
4 broadcasting in any way of the identity of the
5 complainant in this case.

6 Today, it is the Court's, the Court's, serious and
7 difficult task to impose a fit and appropriate sentence
8 on F C , a 44-year-old native of this community
9 of Fort Good Hope, for a serious crime that he
10 committed almost 18 months ago, a crime for which he
11 now pleads guilty as charged.

12 Sentencing is the most difficult and most
13 troublesome part of a Judge's responsibilities. And I
14 want to thank both lawyers in this case, and all of the
15 witnesses, for the assistance given to this Court today
16 on this sentencing hearing.

17 The ultimate responsibility however for a sentence
18 is with the Court. And in passing sentence, this Court
19 is speaking for Canadian society generally.

20 The facts and circumstances of Mr. C 's crime
21 are as follows:

22 In the early morning hours of July 27th, 1997, the
23 victim, S. T , and her common-law husband and
24 others were at the home of this offender F C.
25 here in Fort Good Hope. Everyone had been drinking.
26 The victim S. T and her husband T K got
27 into an argument and Mr. K left the residence and

1 the victim passed out from intoxication and her friends
2 put her in a bed in a bedroom in that house, fully
3 clothed.

4 Later, when one of her friends went to check on
5 her, the offender, F C , was seen to be on top
6 of her having sex with the unconscious S T .
7 Ms. T 's jeans and panties had been removed and were
8 on the floor.

9 Shortly afterwards, Ms. T 's spouse, T
10 K , arrived on the scene and saw Mr. C putting
11 his clothes on and he then fought with Mr. C .
12 When Ms. T was told what had happened to her, she
13 screamed and cried.

14 The complaint was made to the police August 10th,
15 and F C was charged with sexual assault.

16 He elected trial by jury. A preliminary inquiry
17 was held in November 1997, and Mr. C was committed
18 to stand trial.

19 The trial was scheduled for the jury assizes here
20 in Fort Good Hope in October 1998 however the Court was
21 unable to impanel a full jury of 12 persons at that
22 time. Mr. C then decided to change his plea from
23 not guilty to guilty, and his sentencing hearing was
24 adjourned to this week.

25 I am told that the offender is the uncle of the
26 victim's husband. Quite apart from any other aspect of
27 their acquaintance and social contact, therefore there

1 was a relationship of trust that existed whereby a
2 young woman is entitled to expect, whether she is drunk
3 or sober, she is entitled to expect that she is safe
4 from having her husband's uncle violate her while she
5 is passed out and vulnerable.

6 As to the personal circumstances of F C , I
7 am told that he is a man of 44 years of age, that he
8 has lived all of his life here in Fort Good Hope, that
9 he has a Grade 7 education, and that he is an
10 accomplished carpenter.

11 In addition to his employment as a carpenter, he
12 also pursues the traditional activities on the land,
13 and I am told that he has a family with five children.

14 With respect to his criminal record, I have before
15 me two versions of his criminal record, one provided by
16 the Crown, Exhibit S-1; the other appended to the
17 sentencing brief filed by the offender's counsel.

18 By either version, it is a record of 25 years of
19 criminal behaviour in this community and of
20 contravening the liquor laws that exist in this
21 community.

22 There are six drinking and driving convictions,
23 two assault convictions, two for causing a disturbance,
24 several theft or property offences, and a number of
25 convictions for breaches of court orders.

26 I cannot help but note that there is a marked
27 similarity between this man's record and the criminal

1 record of the man that I sentenced earlier today for a
2 virtually identical criminal offence. These two
3 criminal records are similar both in length and in
4 content.

5 As I stated earlier this morning when sentencing
6 Mr. McNeely, the main purpose of the sentencing process
7 is to provide for a safe and a peaceful community and
8 to promote respect for the law.

9 The primary objectives of sentencing individuals,
10 such as Mr. McNeely and Mr. C for the particular
11 crimes of sexual assault that they have committed, are
12 denunciation and deterrence. I am bound by and must be
13 guided by these two important principles and other
14 principles of sentencing which are now codified by
15 Parliament in the Criminal Code of Canada.

16 One of these principles is stated in the following
17 words:

18 "A sentence must be proportionate
19 to the gravity of the offence and
20 the degree of responsibility of
the offender".

21 Another sentencing principle dictated by
22 Parliament is that it is an aggravating circumstance
23 that can result in an increase in the sentence when an
24 offender, in committing the offence, abuses a position
25 of trust in relation to the victim.

26 Yet another guiding principle is that a sentence
27 should be similar to sentences imposed on similar

1 offenders for similar offences committed in similar
2 circumstances.

3 And finally, I am fully cognizant of the fact that
4 F C is Dene and that any period of
5 incarceration will be particularly difficult for him
6 and that the Court should avoid a custodial sentence if
7 that is reasonably possible in the circumstances.

8 Now, at this sentencing hearing, I am presented
9 with a joint submission made by the Crown prosecutor
10 and the defence lawyer. This joint submission in
11 effect is that the Court ought to impose a sentence of
12 imprisonment of less than two years in order that the
13 sentence can be served in the community, Fort Good
14 Hope, under supervision pursuant to certain provisions
15 of the Criminal Code, Section 742.1.

16 Now, the Court is always appreciative when counsel
17 in a case can agree on a sentencing disposition in
18 assisting the Court with its important responsibility
19 of sentencing offenders for serious criminal conduct.
20 And this Court invariably follows a joint
21 recommendation of counsel on sentence unless the
22 proposed sentence is clearly unfit in the
23 circumstances.

24 Now counsel's joint submission in this case, as I
25 understand it, has the support of the Community Justice
26 Committee and the victim and her husband.

27 And I want to again thank the members of the

1 Community Justice Committee for taking an interest in
2 this case and in taking the time and effort to assist
3 the Court in this difficult task. I would encourage
4 the members of the Community Justice Committee to
5 continue with their important work in the service of
6 their community.

7 The Community Justice Committee tells me that they
8 want to work with F. C. particularly now that he
9 has taken the 35-day treatment program at the centre in
10 Hay River. And particularly now that it appears to the
11 Justice Committee that F. C. wants to do
12 something about his drinking problem.

13 From the evidence that I heard, it seems that the
14 members of the Community Justice Committee were of the
15 view or understanding that the case was going to be
16 dropped or at least diverted from the usual or formal
17 court proceedings.

18 There is one aspect of the characterization which
19 has been put on this case that concerns me. And here I
20 am speaking of remorse on Mr. C.'s part or, perhaps
21 in other terms, of Mr. C. taking responsibility for
22 his appalling behaviour towards S. T., his
23 nephew's wife.

24 There was no remorse. There was no acceptance of
25 responsibility by Mr. C. until at least 15 months
26 after the event.

27 Now, it is clearly his right to plead not guilty

1 and to have the Crown prove its case against him but
2 his expressions of remorse and of acceptance of
3 responsibility, as a 44-year-old man, would ring a lot
4 truer if it had happened shortly after the event and
5 not more than a year later, at the eleventh hour, after
6 the jury selection process had been started. In other
7 words, the offender who truly wants to acknowledge
8 responsibility for his wrongful and shameful behaviour
9 hardly exudes remorse and sincerity by insisting on a
10 contested jury trial in his community. This is only
11 common sense.

12 I am told that the reason that the Crown is taking
13 the unusual position here on sentencing in this case is
14 because of the views expressed by the victim that the
15 offender not be sent to jail.

16 With the greatest of respect, I do not view that
17 as an exceptional circumstance. It is not at all
18 unusual for a victim to oppose a period of
19 incarceration for her assailant or the offender.

20 Taking into consideration all of the circumstances
21 of this case and in particular keeping in mind the
22 principles of sentencing that I have referred to and
23 the law of Canada that binds me, I have concluded that
24 I am unable to acquiesce in the joint submission of
25 counsel and the recommendation of the Justice
26 Committee.

27 With this request made to me, I am compelled to

1 refer to the section of the Criminal Code which gives
2 this Court the authority in appropriate circumstances
3 to impose a conditional sentence in the community and
4 this section, which is Section 742.1, reads as follows:

5 Where a person is convicted of an
6 offence and the Court imposes a
7 sentence of imprisonment of less
8 than two years and the Court is
9 satisfied that serving the
10 sentence in the community would
11 not endanger the safety of the
12 community and would be consistent
13 with the fundamental purpose and
14 principles of sentencing, the
15 Court may, for the purpose of
16 supervising the offender's
17 behaviour in the community, order
18 that the offender serve the
19 sentence in the community subject
20 to conditions.

21 Now with respect to the statutory prerequisites in
22 Section 742.1, I deal firstly with the length of the
23 period of imprisonment.

24 In this jurisdiction, in the Northwest
25 Territories, this crime committed by this offender with
26 his particular antecedents would normally draw a
27 sentence in the range of two to three years absent
28 exceptional circumstances, and there are no exceptional
29 circumstances here.

30 Secondly, I am not satisfied on the evidence on
31 this hearing that F C would not pose a danger
32 to the community while serving his sentence here.

33 He is a demonstrated danger to the community,
34 particularly when he has been drinking. Court orders

1 have not proven to be any deterrent regarding
2 restrictions on Mr. C 's behaviour. A 35-day
3 treatment program does not by itself change that.

4 Thirdly, ordering Mr. C to serve his sentence
5 in the community would simply be inconsistent with the
6 fundamental purpose and principles of sentencing that
7 are set out in the Criminal Code; particularly,
8 denunciation, deterrence, proportionality, and finally,
9 parity in sentencing.

10 In my respectful view, and I say that with all
11 sincerity to counsel and members of the Justice
12 Committee and the victim and her family, it is simply
13 not open to the Court to impose a conditional sentence
14 in the circumstances of this case.

15 While normally it is the Court's preference to
16 accept a joint submission on sentence, here the
17 proposed sentence is outside of the range of possible
18 options.

19 In so deciding, I do not intend to say that a
20 conditional sentence can never be imposed for a serious
21 sexual offence. Indeed, this Court has, on at least
22 three occasions in the past 18 months, in the cases of
23 Tugak, Griffin, and Tedjuk, has ordered a conditional
24 sentence to be served in the community for a serious
25 crime of sexual assault. However, in each of those
26 cases, there were special or unusual circumstances and
27 each of those cases came within the statutory

1 parameters of Section 742.1 Criminal Code.

2 Here, the case of F C does not come within
3 those statutory parameters for the reasons that I have
4 mentioned.

5 Please stand now, Mr. C , to be sentenced.

6 F C , for the crime that you have
7 committed, the sexual assault of S T contrary
8 to Section 271 of the Criminal Code, it is the sentence
9 of this Court that you serve a term of imprisonment of
10 two and a half years.

11 In addition, the mandatory weapons prohibition
12 order will be issued under Section 109(2) but in your
13 circumstances, I am going to order that you be granted
14 the exemption provided for in Section 113 for
15 sustenance purposes.

16 In the circumstances, there will be no Victim Fine
17 surcharge.

18 Now, Mr. C , this has been a difficult case
19 today for the Court.

20 I am impressed by the fact that people in your
21 community here seem to want to help you and I hope you
22 don't let them down for what they have gone through
23 today.

24 I know that you are going to be disappointed with
25 this sentence, but I have my responsibilities that are
26 larger than this one case, and you have to accept that
27 this is the sentence of the Court.

1 When you go to the correctional centre, whether
2 it's in Yellowknife or in Hay River or wherever, you
3 know that there are alcohol treatment programs within
4 and near those institutions, and you don't have to
5 forget about your resolve for treating your alcohol
6 problems just because you are going to jail. There is
7 ample opportunity for you there to deal with your
8 alcohol problem. And I suggest that you take every
9 opportunity to get help and I wish you luck in that
10 regard.

11 You can sit down now.

12 MR. LATIMER: My Lord, is it in order for me to
13 request that the Court make an endorsement that the
14 sentence be served in the Territories, he is an
15 aboriginal.

16 THE COURT: As it is a penitentiary term, I
17 will have the clerk endorse the Warrant of Committal
18 with this Court's strong recommendation that Mr. C
19 be allowed to serve his sentence in a facility in the
20 Northwest Territories close to his own community.

21 MR. LATIMER: Thank you, My Lord.

22 THE COURT: Thank you. Just take a seat, sir.

23 Now, counsel, is there anything further on this
24 case?

25 MS. COLTON: No, My Lord.

26 MR. LATIMER: No, My Lord.

27 THE COURT: Thank you, we will close court.

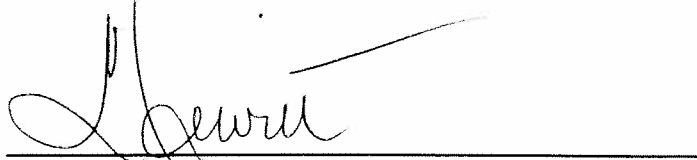
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THE CLERK:

Thank you, My Lord.

(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)

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



Lois Hewitt,
Court Reporter