

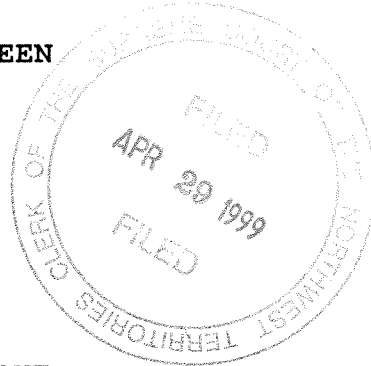
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

AUGUSTINE CATHOLIQUE



Transcript of the Oral Reasons for Sentence of The
Honourable Justice J. Z. Vertes, sitting in Yellowknife, in
the Northwest Territories, on the 27th day of April, A.D.
1999.

APPEARANCES:

Ms. L. Colton:

Counsel for the Crown

Mr. G. Boyd:

Counsel for the Defence

1 THE COURT: The accused, Augustine Catholique, has
2 entered a plea of guilty to a charge that he caused
3 bodily harm in the commission of an assault. The
4 offence occurred here in Yellowknife in September of
5 1998.

6 The facts have been succinctly set forward in an
7 Agreed Statement of Facts, so I will not go over them
8 at length.

9 It is agreed that last September the accused and
10 his friend, the victim in this case, came to
11 Yellowknife in a boat from Lutselk'e. They went to a
12 bar here in Yellowknife. The accused left ahead of
13 the victim. When the victim returned to the boat
14 late at night in the dark, he was jumped by the
15 accused and his face was slashed with a knife. The
16 victim required six stitches in order to close the
17 cut to his face.

18 The accused was arrested shortly thereafter and
19 he has been in custody ever since, that being
20 September 11, 1998.

21 The accused is 54 years old. He has a lengthy
22 criminal record to say the least. Between 1975 and
23 1996 he has, by my count, over 80 criminal
24 convictions. Most of them are what I think can be
25 accurately described as petty crimes having regard to
26 the relatively minor sentences that were imposed in
27 each case. Nine of them were for crimes of violence,

1 but it certainly seems that those types of crimes are
2 not his forte.

3 His counsel described his history as a life of
4 petty crime and alcoholism and certainly, from a
5 superficial examination of the record, that is an apt
6 description.

7 Crown counsel has suggested a sentence in the
8 range of two years. She has fairly conceded that a
9 sentence that would allow the accused to serve his
10 time in a Territorial institution would be
11 appropriate. I think this is an important concession
12 having regard to the fact that the accused, by
13 serving his time in a northern institution, would be
14 able to stay closer in touch with his family, and
15 would be able to pursue whatever programs he has been
16 pursuing during his time on remand.

17 I am told that he has gone through some type of
18 healing program. I am also told, by his counsel,
19 that prior to this unfortunate incident, the accused
20 took positive steps to rehabilitate himself by
21 returning to his home community, by refraining from
22 the abuse of alcohol, and apparently met with some
23 success. It is, therefore, truly unfortunate that he
24 was not as successful in controlling his actions on
25 the night when he slashed his friend's face.

26 Defence counsel urges me to consider the
27 rehabilitative prospects and, of course, the question

1 of rehabilitation is always something that must be
2 kept in mind in any sentencing.

3 Crown counsel, quite rightly, emphasizes the
4 factors of deterrence and protection of the public
5 but they, like rehabilitation, are factors that are
6 present in every sentencing situation.

7 Recently, and indeed very recently, just a few
8 days ago, the Supreme Court of Canada released its
9 judgment in the case of Gladue. In that case, the
10 Supreme Court of Canada admonished and encouraged
11 trial judges to give special consideration to the
12 circumstances of aboriginal offenders such as Mr.
13 Catholique, in recognition of the disgraceful
14 overpopulation of aboriginal persons within the
15 Canadian prison system. The Court recognized that
16 there are unique systemic and historical factors that
17 have led to that unfortunate situation, and that
18 positive steps must be taken to alleviate this great
19 disparity.

20 The Court provided a summary of some of the
21 significant points in its decision and many of them,
22 no doubt, are ones that are familiar to counsel,
23 especially counsel practising in this jurisdiction,
24 since the courts are required to deal with
25 cross-cultural issues on a daily basis.

26 The Supreme Court of Canada emphasized the fact
27 that Part 23 of the Criminal Code, codifies the

1 fundamental purpose and principles of sentencing, and
2 the factors that should be considered by a judge in
3 striving to determine a sentence that is fit for the
4 offender and the offence. In particular, Section
5 718.2(e) mandatorily requires sentencing judges to
6 consider all available sanctions, other than
7 imprisonment, and to pay particular attention to the
8 circumstances of aboriginal offenders.

9 Section 718.2(e) is not simply a codification of
10 existing jurisprudence, it is remedial in nature,
11 according to the Supreme Court of Canada. Its
12 purpose is to ameliorate the serious problem of
13 overrepresentation of aboriginal people in prisons,
14 and to encourage sentencing judges to have recourse
15 to a restorative approach to sentencing. There is a
16 judicial duty, the Court tells us, to give the
17 provision's remedial purpose real force.

18 Section 718.2(e) must be read and considered in
19 the context of the rest of the factors referred to in
20 that section and in light of all of Part 23. All
21 principles and factors set out in Part 23 must be
22 taken into consideration in determining the fit
23 sentence.

24 But the Court emphasized, as well, in that
25 decision that sentencing is an individual process,
26 and in each case the consideration must continue to
27 be what is a fit sentence for this accused, for this

1 offence, in this community.

2 Section 718.2(e) directs sentencing judges to
3 undertake the sentencing of aboriginal offenders not
4 only individually, but also differently because the
5 circumstances of aboriginal people are unique. There
6 may be certain types of sentencing procedures and
7 sanctions that are appropriate in the circumstances
8 for an aboriginal offender that may not be for other
9 types of offenders. But I want to emphasize this:
10 the Supreme Court also pointed out that in
11 endeavoring to take into account these
12 considerations, the trial judge will require
13 information pertaining to the accused and to his
14 circumstances.

15 It may be that judicial notice can be taken of
16 the unique systemic or background factors which may
17 have played a part in bringing the particular
18 aboriginal offender before the courts, and it may be
19 that the courts -- I should say trial judges -- could
20 take notice of the fact that aboriginal communities
21 place an emphasis on restorative approaches as
22 opposed to punitive approaches to sentencing; but,
23 there is a limit to how much judicial notice can be
24 taken.

25 I take, in this particular case, defence
26 counsel's submissions as to the offender's attempts
27 to rehabilitate himself in the two years prior to

1 this most recent offence at face value. I take
2 defence counsel's submission at face value as to the
3 offender's desire to put behind him his life of petty
4 crime and alcoholism. All of that is to the
5 offender's credit, and I give him credit for that.
6 But there is only so far I can go in the absence of
7 specific information and submissions as to what may
8 be appropriate for this particular offender.

9 I have to consider what is an appropriate
10 sentence for this offender, for this crime. I can
11 not ignore his past record and, of course, that is
12 not a question of sentencing him again for his past
13 record, but it seems to me that the record reveals,
14 while it may be a history of petty crime, it
15 certainly reveals a history of criminal activity.

16 I think defence counsel, quite rightly,
17 recognized that there is no alternative to a period
18 of incarceration. The question is what would be an
19 appropriate period of incarceration?

20 If I were to look at the circumstances of this
21 offence simply in isolation without regard to all
22 other circumstances, I would say easily the offender
23 could be sentenced to a penitentiary term. It may
24 not be a very lengthy penitentiary term, but
25 certainly it was a serious crime of personal
26 violence, an attack against an acquaintance with a
27 weapon in circumstances where it's just fortunate for

1 the accused that more serious consequences did not
2 result. If I were to try and put a range to that
3 sentence, I would say it would probably be somewhere
4 between two and a half and three years.

5 To that fact, I must give the offender credit
6 for the pretrial custody that he has served. He has
7 been in pretrial custody now for approximately seven
8 and a half months. By the usual rule-of-thumb, that
9 would be credited at somewhere about 14, 15, or 16
10 months. I also give him credit for his guilty plea.
11 As Crown counsel notes, I can not credit him as much
12 as I might have if the guilty plea came at an earlier
13 time in these proceedings. It came at the last
14 moment but, nevertheless, I think a guilty plea is
15 still worthy of some consideration whenever it comes.
16 So I give him credit for that.

17 Taking all of these factors into consideration,
18 I impose a sentence of 14 months imprisonment. I
19 don't think I need to impose any other penalty. I
20 will hear from the Crown with respect to the question
21 of a firearms prohibition.

22 **(SUBMISSIONS OF COUNSEL REGARDING GUN PROHIBITION)**

23 THE COURT: In addition to the sentence of
24 imprisonment that I've just imposed, I have to
25 consider the question of a firearm prohibition. The
26 Criminal Code makes it mandatory that an order be
27 issued for a conviction for this type of offence.

1 That the accused be prohibited from having in his
2 possession any firearms or ammunition for a period of
3 ten years.

4 Section 113 of the Criminal Code enables me,
5 however, to authorize a Chief Firearms Officer to
6 consider issuing an authorization or a certificate
7 for the accused to possess firearms or use firearms
8 for the purposes of hunting or trapping or for
9 employment.

10 As I read the section, it is not up to me
11 anymore to exempt the accused from a firearm
12 prohibition order, but simply to authorize the
13 otherwise competent authorities who are directed with
14 the responsibility of issuing firearms certificates,
15 to consider issuing this man a firearms certificate
16 notwithstanding my prohibition order.

17 In my respectful opinion, notwithstanding the
18 fact that a weapon, i.e. a knife, was used in the
19 commission of this offence, there does not appear to
20 be anything in this man's background to suggest a
21 danger to the public if he were to possess firearms
22 for the purposes of hunting or trapping or
23 employment.

24 Since he comes from the community of Lutselk'e,
25 and since I take it that he will be returning there
26 after his period of incarceration has been completed,
27 and recognizing the importance of traditional

1 activities to the people of Lutselk'e, I think it
2 would be appropriate to authorize the Chief Firearms
3 Officer to issue this man a certificate to possess or
4 use firearms for those traditional purposes.

5 In addition, if he were to obtain employment
6 such as I was told that he was employed previously as
7 a bylaw officer, if he is able to obtain employment
8 and if the use and possession of a firearm is
9 necessary for that employment within the community,
10 then that seems to me to be an appropriate cause to
11 exempt this man from the prohibition order.

12 So the prohibition order will issue as
13 mandatorily required by the Criminal Code; however, I
14 make the order pursuant to Subsection(1) of Section
15 113 authorizing the Chief Firearms Officer to issue
16 this man a certificate notwithstanding the
17 prohibition order. Is that clear?

18 MS. COLTON: Yes, Sir.

19 THE COURT: Thank you for your assistance,
20 counsel. Is there anything else we need to address?

21 MS. COLTON: No -- actually there is the matter of
22 some exhibits.

23 MR. BOYD: Yes, that is correct.

24 THE COURT: Are these exhibits in the custody of
25 the police?

26 MS. COLTON: In the custody of the police, that's
27 right.

1 THE COURT: Any exhibits that are maintained in
2 respect of this prosecution, other than the
3 proceedings that are already on file with the
4 Court -- other than exhibits that are already on file
5 with the Court, can be either returned or destroyed
6 depending on the wishes of the police. Obviously if
7 it's something like clothing that is blood-stained
8 and torn, then that can be destroyed. If it's
9 something that can be returned in fairly decent shape
10 to it's rightful owner, then it can be returned to
11 its rightful owner.

12 MS. COLTON: I think the -- the only exhibit I
13 think the police would wish to retain would be the
14 knife.

15 THE COURT: The knife can be destroyed.

16 MS. COLTON: Thank you, Sir.

17 THE COURT: Anything else?

18 MR. BOYD: No, Sir.

19 THE COURT: Thank you, counsel.

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21 Certified pursuant to Rule 723 of the Supreme
22 Court Rules.

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24 
25 Sandra Burns C.S.R. (A)
26 Court Reporter
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