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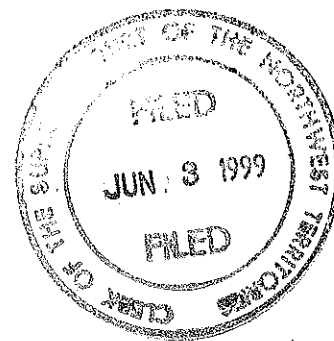
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

L R




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Transcript of the Oral Reasons for Sentence by The Honourable Justice V.A. Schuler, at Wha Ti in the Northwest Territories, on Wednesday, May 26th A.D., 1999.

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APPEARANCES:

Ms. L. Charbonneau: Counsel for the Crown  
 Mr. A. Mahar: Counsel for the Accused

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 Charge under s. 271 Criminal Code of Canada

1 THE COURT: My task today is to sentence L  
2 R who has today pleaded guilty to a charge of  
3 sexually assaulting his wife.

4 At one time, a man could not be charged with  
5 sexually assaulting his own wife. But the law has  
6 changed, or the law did change many years ago, and it's  
7 very clear that if a man has sex with his wife and she  
8 does not agree to it, that is a crime. Mr. R has  
9 acknowledged that by pleading guilty to this charge.  
10 In other words, in pleading guilty he is saying that  
11 yes, he did commit a crime when he had sex with his  
12 wife although she told him that she didn't want to.

13 In fact, it's very clear that it is a serious  
14 crime because a person who is convicted of sexual  
15 assault could be sentenced to ten years in a federal  
16 penitentiary. That is the longest sentence that a  
17 Court can give for sexual assault but it is not  
18 uncommon for people to be sent to jail for three or  
19 four years for sexual assault.

20 In every case, the Court has to consider what  
21 happened in the particular sexual assault and also to  
22 consider the circumstances of the person who committed  
23 the sexual assault.

24 The Court has to consider also that it is  
25 important that people have respect for the law and that  
26 the public and married women and other women be  
27 protected from these things happening to them.

1           In this case, there are a number of factors that I  
2           have to consider.

3           Mr. R       has, as I have said, pleaded guilty to  
4           this charge of sexual assault. That means that he is  
5           taking responsibility for this very wrong thing that he  
6           did. It also means that his wife does not have to get  
7           up in front of a jury and in front of her community and  
8           talk about this very painful and embarrassing thing  
9           that happened. We know from the many cases that the  
10          Court sees that it is very difficult for people to talk  
11          about such embarrassing and difficult things and it's  
12          very difficult for people to wait while the jury or the  
13          Court decides what is going to happen. So, I accept  
14          that in pleading guilty, although Mrs. R       did have  
15          to testify at the preliminary hearing, she has not had  
16          to go through the trauma of testifying yet again.

17          Now, before I continue, I realize that I neglected  
18          to ask Mr. R       whether there was anything that he  
19          wanted to say so I will ask him if he does wish to say  
20          anything and if he does, to please stand up and say  
21          it.

22          MR. MAHAR:                   He was just asking if he had to say  
23          anything, ma'am, and I said no.

24          THE COURT:                   So I take it from that he does not  
25          wish to say anything?

26          MR. MAHAR:                   No.

27          THE COURT:                   I also have to consider in this

1 case that this crime of sexual assault is a very  
2 serious offence.

3 I agree with Crown counsel that in cutting his  
4 wife's hair as he did, Mr. R showed even more  
5 disrespect to her than was shown in the sexual assault  
6 itself.

7 The relationship of husband and wife is a special  
8 one, and it's a relationship that should be a  
9 relationship of trust and of mutual respect and care  
10 for each other. So when a man assaults his wife, he  
11 breaks or harms that special relationship which we know  
12 as society is so important to preserve. That harm to  
13 that special relationship is something that we consider  
14 makes the offence even more serious.

15 I have to consider as well that Mr. R was  
16 convicted of an assault on his wife, this same lady, in  
17 1993. Now that is over six years ago. From the  
18 sentence that he received, I conclude that perhaps that  
19 assault did not inflict serious injury on his wife.

20 I do notice that that assault took place  
21 apparently on Christmas Day of 1992, and I guess when  
22 one thinks that that should be a happy day for a  
23 family, that makes it especially sad that Mr. R  
24 would have treated his wife that way on that occasion.

25 I have to keep in mind that Mr. R was already  
26 punished for that earlier assault and it's not for me  
27 now to do something that would repunish him in any

1 way.

2 Mr. R 's lawyer has told me about him and I  
3 have also a letter from Chief Nitsiza that talks about  
4 Mr. R . The letter certainly is very complimentary  
5 about Mr. R and says that he is very reliable and  
6 that he is a person who is depended upon when things  
7 happen in the community. The letter also talks about  
8 how the community has benefitted from the concern and  
9 respect Mr. R shows towards the other people in the  
10 community. That should remind everyone that the same  
11 kind of concern and respect should be shown for a man's  
12 wife.

13 Now both the Crown and defence have said that they  
14 suggest that in this case, although a jail term would  
15 be appropriate, it should be shorter than in some other  
16 cases and it should be a jail term that Mr. R could  
17 spend in the community, here in Wha Ti, instead of  
18 going to the Yellowknife Correctional Centre. That is  
19 the kind of sentence that a Court can impose on a  
20 charge of sexual assault although I think it's fair to  
21 say that it's not very common for a Court to do that.

22 I will say first of all that in all the  
23 circumstances of this case, and particularly  
24 considering that Mr. R has pleaded guilty, I am  
25 satisfied that whatever sentence he gets should be less  
26 than two years.

27 In deciding whether Mr. R should serve that

1 sentence here in the community, first the law requires  
2 that I be satisfied that if he is allowed to serve the  
3 sentence in the community, it would not endanger the  
4 safety of the community.

5 Considering all the circumstances that I have been  
6 told about and in particular considering that  
7 Mr. R from what I understand from the letter, is  
8 considered a helpful person in the community, I am  
9 satisfied that the safety of the community would not be  
10 endangered if he were to stay here in Wha Ti.

11 I am also satisfied that allowing Mr. R to  
12 serve the sentence here in the community would be  
13 consistent with the principles of sentencing in that  
14 conditions can be placed on him. Those conditions  
15 will, I believe, show to people that Mr. R is not  
16 simply being allowed to stay in the community and not  
17 having any consequences upon himself from what  
18 happened.

19 I would agree again with Crown counsel's  
20 characterization that there are factors about this case  
21 that do take it out of the ordinary and, in particular,  
22 the guilty plea and the fact that now the complainant  
23 will not have to be concerned about a trial at a future  
24 date.

25 Mr. R , would you stand up, please.

26 Mr. R , the sentence that I impose on you is  
27 one of two years less a day imprisonment. You will

1           however serve that sentence here in the community of  
2           Wha Ti subject to the conditions that I will impose  
3           upon you.

4           First of all, the mandatory conditions which are  
5           that you keep the peace and be of good behaviour,  
6           appear before the Court when required to do so by the  
7           Court, report to a supervisor, and I am going to name  
8           specifically Nora Quitte in Rae, and you are to do that  
9           by telephone within five working days of today. And  
10          after that, you are to report when required by  
11          Ms. Quitte and in the manner directed by her. You are  
12          to remain within the Northwest Territories unless you  
13          have written permission to go outside from the Court or  
14          from your supervisor. You are to notify the Court or  
15          the supervisor in advance of any change of name or  
16          address and promptly notify the Court or the supervisor  
17          of any change of employment or occupation.

18          As further conditions, you are not to have any  
19          contact with N R unless she initiates that  
20          contact, unless she contacts you first.

21          You are to perform 240 hours of community service  
22          as directed by the supervisor over a period of 18  
23          months.

24          You are to provide for the support of your  
25          children to the best of your ability and to the  
26          satisfaction of the supervisor.

27          For the first year of your sentence, you are to

1 remain in your residence, House number 500, or any  
2 other residence that you may move to, between the hours  
3 of 11 o'clock p.m. and 7 o'clock a.m. except if  
4 required to be absent from your house during those  
5 hours for purposes of your employment.

6 Now with respect to this conditional sentence that  
7 I have now imposed on you, the clerk will give you a  
8 copy of the conditional sentence order. And the clerk  
9 will also explain to you the provisions of  
10 Sections 742.4 and 742.6 of the Criminal Code. Those  
11 sections of the Criminal Code deal with how the  
12 conditions may be changed and also with the procedure  
13 if you breach any of the conditions.

14 It's important, Mr. R , that you understand and  
15 that everyone in the community understands that  
16 although you will be serving this sentence here in the  
17 community, if you breach any of the conditions one of  
18 the things that can happen is that you may be required  
19 to serve the sentence in a jail, in the Yellowknife  
20 Correctional Centre.

21 Do you understand the conditions that I have made  
22 for your sentence?

23 THE ACCUSED: Yes.

24 THE COURT: All right, thank you.

25 Now, with respect to Section 109 of the Criminal  
26 Code, I am required to make an order prohibiting you  
27 from possessing any firearm, crossbow, a prohibited



1            weapon, restricted weapon, ammunition, explosive  
2            substance, and as otherwise set out in Section 109.  
3            And that order will be in effect for a period of ten  
4            years from today.

5            That order will however be subject to Section 113  
6            of the Criminal Code.

7            Under Section 113(1), I hereby authorize a chief  
8            firearms officer or the registrar to issue to you an  
9            authorization license or registration certificate for  
10           sustenance or employment purposes. And I do that  
11           taking into consideration that neither the offence  
12           before me nor the offence that you were previously  
13           convicted for involved any firearms. Also, there is no  
14           evidence before me that the safety of anyone would be  
15           in danger.

16           You can sit down now, Mr. R .

17           Mr. R , as I said, the conditions that you are  
18           on have to be obeyed and if you breach any of them, it  
19           may mean that you end up serving the sentence in jail.  
20           There are many people here today and I am sure that  
21           when they see you walking around town or perhaps when  
22           they see that you are subject to a curfew, they will  
23           then think that the reason for this is because of the  
24           way that you have treated your wife.

25           Counsel, is there anything further in particular  
26           with respect to the conditions or the firearm  
27           prohibition order that I may have missed?

1 MS. CHARBONNEAU: Nothing from the Crown.

2 THE COURT: I suppose the only other thing is  
3 that there should be an order with respect to surrender  
4 of firearms.

5 MR. MAHAR: He does have three firearms, My  
6 Lady. Perhaps he could be directed to dispose of those  
7 or surrender them or otherwise dispose of them within  
8 90 days. That would give him time to make the  
9 application to the relevant firearms authority.

10 THE COURT: Does Crown have any submissions in  
11 that regard?

12 MS. CHARBONNEAU: Perhaps I would suggest that the  
13 period be slightly shorter than that, My Lady. Under  
14 the former regime, it was usually along the lines of 14  
15 days. I appreciate that Mr. R. might need more time  
16 if he wants to take care of the application but 90 days  
17 does seem like a long time.

18 THE COURT: Yes, I think it probably does. I  
19 will make the order that all such items then pursuant  
20 to the order be surrendered to the RCMP within 30 days  
21 of today's date.

22 MR. MAHAR: Perhaps the order could also read  
23 or otherwise lawfully disposed of. He can then give  
24 them to family members with FACs or whoever else he  
25 wishes to give them to.

26 MS. CHARBONNEAU: That might be a good idea. The  
27 detachment here is quite small. I haven't consulted

1 with the officer about this but if there is another  
2 lawful means where the firearms could find themselves  
3 somewhere else, it might actually be preferable.

4 THE COURT: I am just looking at Section 114  
5 and it seems to specify only certain individuals. It  
6 says "a peace officer, a firearms officer, or a chief  
7 firearms officer".

8 MS. CHARBONNEAU: I'm sorry, My Lady, what section  
9 were you --

10 THE COURT: -- 114. It is discretionary  
11 however so I suppose that perhaps since it does use the  
12 word "may", I can do it the way that you have  
13 suggested. It will be to the RCMP or otherwise  
14 lawfully disposed of.

15 MS. CHARBONNEAU: Yes, the officer was just advising  
16 me that the procedure that he would be comfortable with  
17 would be if on written instructions from Mr. R , he  
18 could then transfer these firearms to someone else who  
19 is entitled to have them so that it's not simply a  
20 matter of turning the firearms over to the RCMP and  
21 leaving them there.

22 And the second thing, there is apparently one of  
23 the firearms which Mr. R possesses that belongs to  
24 the rangers and would have to be returned to that  
25 entity.

26 THE COURT: I think if the order is worded that  
27 he is to within 30 days surrender all such items to the

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RCMP or otherwise lawfully dispose of them, that should cover all of these circumstances.

MS. CHARBONNEAU: Yes, I agree.

THE COURT: All right, the order will then be worded that way.

Is there anything else, counsel, with respect to this case?

MR. MAHAR: No, My Lady.

INTERPRETER CECILIA WETRADE: I'm sorry, I didn't catch that about 30 days.

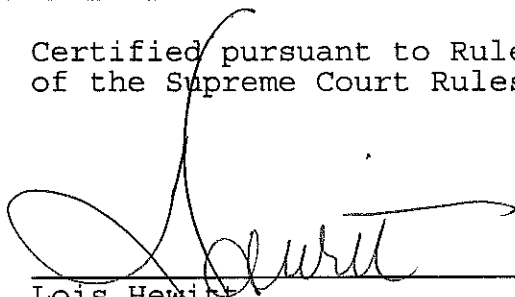
THE COURT: Mr. R is to give all of his firearms, ammunition, and explosives, any that he has, within 30 days to the RCMP or otherwise lawfully dispose of them.

Counsel, if there is nothing else further, I will just ask that Mr. R -- or he will be directed rather to remain for purposes of getting a copy of the order and having it explained to him. I will also ask that Ms. Wetrade, that you assist with that.

We will close court then. Thank you very much, counsel, for your disposition of the case.

**(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

Certified pursuant to Rule 723 of the Supreme Court Rules.



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Lois Hewitt,  
Court Reporter