R. v. Ekenale, 2000 NWTSC 36 CR 03820

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

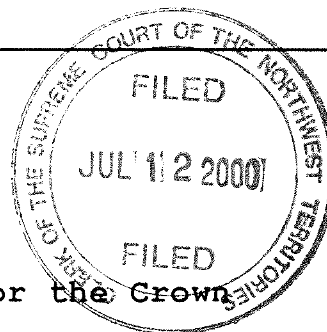
IN THE MATTER OF:

HER MAJESTY THE QUEEN

- V -

ANGUS JOHN EKENALE

Transcript of the Oral Reasons for Sentence by The Honourable Justice J. Z. Vertes, sitting in Hay River, in the Northwest Territories, on the 9th day of June, A.D., 2000.



APPEARANCES:

Ms. D. Robinson: Counsel for the Crown
Ms. L. Colton: Counsel for the Crown
Mr. J. Brydon: Counsel for the Defence

1 THE COURT: Angus John Ekenale was convicted
2 by a jury of the offence of manslaughter.
3 Specifically he was convicted of causing the death of
4 Elizabeth Rose Yendo, in the community of Wrigley, in
5 July of 1971.
6 In convicting the accused I am satisfied that the
7 jury found the following facts. In 1971, the accused
8 was 25 years of age; the victim was 19. They were
9 boyfriend and girlfriend. One night the accused drank
10 some home brew. He was intoxicated to some degree.
11 So was apparently the victim. In the early morning
12 hours they argued. The victim ran down to the shore
13 of the Mackenzie River. The accused followed her.
14 They struggled and fought. The accused either struck
15 the victim or pushed her but in the event she fell
16 into the water. The accused left the scene and told
17 no one about what had happened.
18 The next day members of the community conducted a
19 search. A day or two later the body of Elizabeth Rose
20 Yendo was found floating on the shoreline. A doctor
21 came from Fort Simpson and conducted a rudimentary
22 autopsy. The conclusion was death by drowning. A
23 subsequent coroner's inquest came to the same
24 conclusion.
25 Almost 20 years later, a resident of Wrigley, who
26 had been just a teenager in 1971, came forward and
27 said that he was an eyewitness, an eyewitness to the

1 struggle at the riverbank. The police re-opened the
2 investigation. They exhumed the body of Elizabeth
3 Rose Yendo. An autopsy was conducted on the remains
4 by a medical examiner and a forensic anthropologist.
5 Their conclusion was that the victim had suffered a
6 broken nose shortly before, at, or shortly after her
7 death.
8 The accused was charged in 1991 with
9 manslaughter. A preliminary inquiry was held. The
10 purported eyewitness recanted his testimony (claiming
11 at this trial that the accused had threatened him).
12 The accused was discharged at the preliminary inquiry.
13 In 1997, however, further people came forward
14 claiming that they too had seen what had happened at
15 the riverbank. The police once again re-opened their
16 investigation resulting in this present charge of
17 manslaughter being laid in June of 1999. The accused
18 has been in custody since then (almost a full year
19 although three months of that was spent serving a
20 sentence on an unrelated breach charge).
21 Counsel on this case both referred to the broad
22 range of sentences available for the crime of
23 manslaughter. It has often been described as a crime
24 that encompasses a continuum of acts, ranging from
25 "near accident" to "near murder." The general
26 sentencing philosophy to the crime of manslaughter was
27 described by (now) Chief Justice McLachlin in *R. v.*

1 *Creighton* (1993), 83 C.C.C. (3d) 346 (S.C.C.), at
2 pages 374-375:

3 The *Criminal Code* confines manslaughter to non-intentional
4 homicide. A person convicted of manslaughter is *not* a murderer.
5 He or she did *not* intend to kill someone. A person has been
6 killed through the fault of another, and that is always
7 serious. But by the very act of calling the killing *manslaughter*
8 the law indicates that the killing is less blameworthy than
9 murder. It may arise from negligence, or it may arise as
10 the unintended result of a lesser unlawful act. The conduct is
11 blameworthy and must be punished, but its stigma does not approach
12 that of murder...

13 The Chief goes on:

14 ...the offence of manslaughter stands in sharp contrast to the
15 offence of murder. Murder entails a mandatory life
16 sentence; manslaughter carries with it no minimum sentence.
17 This is appropriate. Because manslaughter can occur in a wide
18 variety of circumstances, the penalties must be flexible. An
19 unintentional killing while committing a minor offence, for
20 example, properly attracts a much lighter sentence than an
21 unintentional killing where the circumstances indicated an
22 awareness of risk of death just short of what would be required
23 to infer the intent required for murder. The point is, the
24 sentence can be and is tailored to suit the degree of moral fault
25 of the offender.

26 That last comment is in line with the fundamental
27 principle guiding all sentencing, as stated in Section

1 718.1 of the *Criminal Code*, that a sentence must be
2 proportionate to the gravity of the offence and the
3 degree of responsibility of the offender.
4 The death of Elizabeth Rose Yendo has been a
5 controversial and stressful issue for many of the
6 residents of Wrigley throughout the years. It has
7 been the subject of much gossip and speculation. I
8 heard allegations about how witnesses were afraid of
9 the accused and his family, thereby explaining their
10 reluctance to come forward for so many years. I heard
11 allegations of threats being made during the course of
12 this trial by members of the accused's family. Of
13 course I cannot penalize the accused more harshly
14 because of acts allegedly committed by others. But I
15 relate this to give an idea of the impact that this
16 crime caused, an impact more widespread than merely
17 the victim's family.
18 The accused is now 54 years old. He is a Slavey
19 Indian born and raised in Wrigley. He has lived in a
20 traditional manner spending long portions of his life
21 in the bush hunting and trapping. He has only a grade
22 6 education. But he has maintained his native culture
23 and language and has helped to teach young aboriginals
24 about their culture. He is the father of four
25 children who are apparently close to him and who
26 themselves have apparently suffered difficulties as a
27 result of the accused's incarceration.

1 The accused, when this crime was committed, had
2 no criminal record. However, he does now. He has
3 been convicted of eight offences between 1978 and
4 1998. These include convictions for assault and
5 assault causing bodily harm. In 1993, he was
6 convicted of sexual assault (for acts perpetrated in
7 the mid-1980's) and sentenced to three years
8 imprisonment. In 1995, he was again convicted of
9 sexual assault and sentenced to one year imprisonment.
10 I was told that the accused had a long-standing
11 problem with alcohol abuse but that, during the
12 1990's, he was in various treatment programs and now
13 feels he has it under control.
14 I must not, of course, use the record of
15 post-offence convictions as an aggravating factor.
16 But, as in the case referred to by Crown counsel, *R.*
17 *v. Peters*, [2000] B.C.J. No. 959 (C.A.), the criminal
18 record is a strong indicator that this accused is not
19 a good candidate for a rehabilitative sentence. It is
20 an indicator of his character.
21 Sentencing for crimes committed many years ago
22 always presents particular problems. The sentencing
23 principles that are most affected are those of
24 individual deterrence and rehabilitation. By
25 individual deterrence I mean that the sentence should
26 deter this accused from committing a similar offence
27 in the future. By rehabilitation I mean that the

1 sentence imposed should reflect the hope that somehow,
2 while serving his sentence, the accused will be
3 rehabilitated so that he will return to society as a
4 useful and law-abiding citizen. If an accused, during
5 the years intervening between the crime and the
6 punishment, leads an exemplary life and is remorseful
7 for one's past criminal conduct, then the principles
8 of individual deterrence and rehabilitation are
9 rendered moot. In such situations there may be
10 sentences imposed that are less severe than what the
11 crime ordinarily attracts. But where there has been,
12 as in this case, a lengthy suppression of the facts
13 (indeed an almost callous indifference to the stress
14 and anxiety that this death caused to his community),
15 no sign of remorse, and a less than exemplary life in
16 the intervening years, then there is no reason why the
17 sentence should be any different than it would be if
18 the crime had been committed yesterday. Furthermore,
19 a sentence in the appropriate range for the relevant
20 crime, while it may not serve the objective of
21 individual deterrence, would serve the other
22 objectives of denunciation and general deterrence, and
23 would avoid disparity and uphold public confidence in
24 the administration of justice.
25 The other factor that I must consider is that set
26 out in Section 718.2(e) of the *Criminal Code*:
27 A court that imposes a sentence
shall also take into

1 consideration the following principles:

2 ...

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

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7 In this case, while certainly the accused's
8 aboriginal background is a fact to consider, there
9 were no submissions regarding any unique systemic or
10 background factors which may have played a part in
11 bringing this particular aboriginal offender before
12 the Court nor submissions as to any types of
13 sentencing procedures and sanctions which may be
14 appropriate in the circumstances for the offender
15 because of his particular aboriginal heritage (as
16 mandated by the Supreme Court of Canada in *R. v.*
17 *Gladue* (1999), 133 C.C.C. (3d) 385). Undoubtedly that
18 was because in this case, as in all but the most
19 extraordinary manslaughter cases, the question is not
20 whether incarceration is the appropriate disposition
21 but, rather, how long the accused needs to be
22 incarcerated to give full effect to all the relevant
23 sentencing principles (to paraphrase something said in
24 the *Peters* case).
25 As in the *Peters* case, this is a case where this
26 accused's aboriginal background, while relevant, does
27 not justify a sentence other than a substantial period

1 of incarceration. As stated in the *Gladue* case:

2 In describing the effect of s. 718.2(e) in this way, we do not 3 mean to suggest that, as a general practice, aboriginal 4 offenders must always be sentenced in a manner which gives 5 greatest weight to the principles of restorative justice, and less 6 weight to goals such as deterrence, denunciation, and 7 separation. It is unreasonable to assume that aboriginal peoples 8 themselves do not believe in the importance of these latter goals, 9 and even if they do not, that such goals must not predominate 10 in appropriate cases. Clearly there are some serious offences 11 and some offenders for which and for whom separation, 12 denunciation, and deterrence are fundamentally relevant.

13

14 Yet, even where an offence is considered serious, the length of 15 the term of imprisonment must be considered. In some 16 circumstances the length of the sentence of an aboriginal 17 offender may be less and in others the same as that of any 18 other offender. Generally, the more violent and serious the 19 offence the more likely it is as a practical reality that the 20 terms of imprisonment for aboriginals and non-aboriginals 21 will be close to each other or the same, even taking into 22 account their different concepts of sentencing.

23 When I consider all of the circumstances of this

24 case I see no cause to differentiate this accused's

25 situation from that of any other individual convicted

26 of a manslaughter of similar circumstances.

27 In considering the appropriate length of

1 sentence, I take into account certain aggravating
2 factors, in particular, that this was a violent
3 encounter, no doubt fueled by alcohol, between two
4 people who were in a romantic relationship. There is
5 nothing unusual or extraordinary about these
6 circumstances, indeed they are tragically all too
7 common. I take into account the fact that the accused
8 took no steps to summon help for the victim. In my
9 opinion, in light of all of the circumstances of this
10 case, I think an appropriate sentence would be one of
11 six to seven years imprisonment. I must, however,
12 credit the accused for the nine months spent in
13 pre-trial custody (which I do so as a factor of 2 to
14 1).
15 Stand up, Mr. Ekenale. Mr. Ekenale, you have
16 been convicted by a jury of a crime that you committed
17 almost 30 years ago, and now I must sentence you for
18 that. For the offence of manslaughter I sentence you
19 to serve a term of imprisonment of five years. You
20 may sit down.
21 I will impose no other sanctions. The Crown is
22 not seeking any type of firearm prohibition or other
23 orders, since such sanctions were not mandatory at the
24 time of this offence.
25 Because of what I have been told about the
26 accused's family circumstances, and in particular the
27 circumstances of his children, I will have the clerk

1 endorse the warrant of committal with my
2 recommendation that the correctional authorities give
3 serious consideration to allowing this man to serve
4 his sentence in a Northern institution.
5 Finally, counsel, I want to thank all of you for
6 your excellent work in this difficult case. Anything
7 else we need to address, Ms. Robinson?
8 MS. ROBINSON: No, thank you, My Lord.
9 THE COURT: Mr. Brydon?
10 MR. BRYDON: No, My Lord, thank you.
11 THE COURT: Then once again thank you, and
12 Madam Clerk, I believe we can close court.
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15 **Certified Pursuant to Practice Direction**
16 **#20 dated December 28, 1987**
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19 **Joel Bowker**
Court Reporter
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