

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ERIC PEARSON



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Transcript of the Oral Reasons for Sentence of The Honourable Justice V.A. Schuler, sitting in Fort Simpson, in the Northwest Territories, on the 14th day of June, A.D. 2000.

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APPEARANCES:

Mr. J. O'Halloran:

Counsel for the Crown

Mr. A. von Kursell:

Counsel for the Defence

1 THE COURT: Mr. Pearson has been convicted now of  
2 the offence of aggravated assault in disfiguring  
3 Charles Walker.

4 The essence of the offence is that Mr. Pearson  
5 bit off a good-sized chunk of Mr. Walker's ear. The  
6 description that was given by Mr. Gill, who found the  
7 piece of ear, was I believe that it was approximately  
8 an inch and a half by a quarter inch in size, and  
9 certainly from the photograph that was entered as an  
10 exhibit, that would appear to be about right.

11 The result of the bite was that Mr. Walker was  
12 disfigured; in other words, he has a very visible  
13 abnormality, shall we say, to his ear, but it also  
14 caused physical pain to him and, as he's indicated in  
15 the victim impact statement, has caused him  
16 substantial embarrassment because of the appearance  
17 of the ear.

18 It has also, I note, caused him concern, which I  
19 think is quite understandable, in that the danger,  
20 the potential danger or the potential consequences of  
21 a human bite are well known.

22 The offence, I'm satisfied, occurred when Mr.  
23 Pearson was angry. He was in the midst of a scuffle  
24 with Mr. Walker. I found that Mr. Pearson used  
25 excessive force in what he did. In thinking about  
26 the facts of the case to some extent, I suppose I  
27 would compare it to a bar room brawl. There were

1 verbal insults, verbal exchanges between these two  
2 men, they escalated to physical violence and, as  
3 unfortunately all too often happens, somebody goes  
4 overboard.

5 I've been told that Mr. Pearson is 29 years old  
6 and he's been working in the logging industry for  
7 approximately nine years. From all reports, he's  
8 done very well for himself despite a difficult and  
9 unsettled childhood. The letter from his employer  
10 indicates that he's a hard-working employee, a good  
11 employee. He also comes before the Court without any  
12 previous criminal record which is to his credit.

13 The fact that Mr. Pearson exercised his right to  
14 a trial is not to be held against him. He simply  
15 doesn't get the benefit or mitigation of a guilty  
16 plea. I suppose that it's unfortunate in some ways  
17 for both Mr. Walker and Mr. Pearson that this matter  
18 wasn't dealt with at an earlier date, it's been over  
19 a year since the offence happened, I'm not going to  
20 draw any particular conclusions in that regard, but  
21 it just seems to me to be the type of offence that  
22 should probably have been dealt with earlier and I  
23 think I'll just leave it at that.

24 This is a serious offence, the consequences have  
25 been serious for Mr. Walker. I am satisfied that Mr.  
26 Pearson has expressed remorse.

27 Mr. Walker testified that Mr. Pearson apologized

1 to him and Crown counsel also confirmed that Mr.  
2 Pearson paid Mr. Walker \$500 towards his lost wages.

3 Aggravated assault is an offence for which the  
4 maximum sentence that the Court can impose, in other  
5 words in any case of aggravated assault, is 14 years  
6 in jail which is an indication of how seriously  
7 Parliament considers it.

8 At the same time, it has to be acknowledged that  
9 aggravated assault covers a very wide range of  
10 criminal activity and I think that counsel have  
11 essentially and correctly acknowledged this in their  
12 submissions; in other words, that it's difficult to  
13 compare one case to another.

14 In this case, I take into account that the  
15 offence occurred, as I said, in the course of an  
16 altercation between these two men; one of whom, Mr.  
17 Walker, was drunk; and the other, Mr. Pearson, I find  
18 was upset and angry. Mr. Pearson knew that Mr.  
19 Walker was drunk. Mr. Pearson was not drunk and was  
20 in a better position to resolve their differences or  
21 to stop things or to avoid things escalating without  
22 becoming physical.

23 I am satisfied, however, that the biting  
24 occurred in the heat of the moment, the heat of the  
25 struggle, and that it was not premeditated beyond the  
26 act itself.

27 As I've indicated, it was, however, a dangerous

1 act and I don't think there can be any question of  
2 that. It was dangerous and it resulted in serious  
3 consequences.

4 Nothing in the evidence suggests that Mr.  
5 Pearson is likely to commit this type of offence  
6 again or that he is otherwise a danger to society.  
7 However, the case clearly calls for a sentence that  
8 will demonstrate that this type of behavior is not  
9 acceptable and that it will bring significant  
10 consequences.

11 In all the circumstances, I think that a term of  
12 incarceration is called for, although in my view  
13 something less than what the Crown has submitted will  
14 suffice. Mr. Pearson's employment appears to be  
15 somewhat flexible and seasonal, and in all the  
16 circumstances I'm not going to make the sentence  
17 intermittent.

18 Would you stand please, Mr. Pearson. I sentence  
19 you to serve a term of imprisonment of two months. I  
20 also make a restitution order and, counsel, what I'm  
21 going to do is make the restitution order under  
22 Section 738(1)(b) of the Criminal Code so that there  
23 will be not a probation order, this will simply be an  
24 order for restitution and I take it I should deduct  
25 the \$500 from the 2000, is that -- that's what I  
26 understood.

27 MR. O'HALLORAN: The 2,240.

1 THE COURT: Well, there has already been an order  
2 for 240, so I take it that order stands. That's what  
3 you told me, I didn't see -- you can sit down, Mr.  
4 Pearson.

5 MR. O'HALLORAN: I understand the order was made, but  
6 it hasn't been fulfilled. I'm suggesting that you  
7 make it as part of the restitution order, the  
8 gentlemen won't be required to pay it twice  
9 obviously, but if you put the order then he should  
10 have to pay it.

11 THE COURT: Do you have any comments, Mr. von  
12 Kursell?

13 MR. VON KURSELL: This court can adopt, I assume, just  
14 given its paramountcy, the order of the inferior  
15 court, adopt and endorse, it can all be put into one.  
16 These orders can be accumulated, and the difficulty  
17 with the last order with relation -- was to provide  
18 some assistance to Mr. Pearson as to through whom or  
19 how restitution is to be made. That would be  
20 satisfactory in my submission.

21 THE COURT: All right. Then if it's \$2,240, is  
22 the \$500 to come off of that?

23 MR. O'HALLORAN: I would suggest that would be  
24 appropriate, yes.

25 THE COURT: All right, that would be 1740 then?

26 MR. O'HALLORAN: Yes, Madam.

27 THE COURT: All right, there will be a restitution

1           order in the amount of \$1,740. That is -- I suppose  
2           it should be paid to the clerk of the court for  
3           furtherance to Mr. Walker?

4   MR. VON KURSELL:        If it please the Court.

5   THE COURT:                Would you concur with that, Mr.  
6           O'Halloran?

7   MR. O'HALLORAN:         Yes.

8   THE COURT:                All right, it will be paid that way  
9           then. The victim of crime surcharge will be waived  
10          in the circumstances. The section of the Criminal  
11          Code requires that a firearm prohibition order be  
12          made, and since I have not heard any reason why it  
13          should not be made I will, therefore, make an order  
14          under Section 109 of the Criminal Code that Mr.  
15          Pearson is prohibited from possessing firearms,  
16          ammunition, explosive substances or anything else  
17          referred to in Section 109 for a period of time that  
18          starts today and expires ten years from his release  
19          from imprisonment.

20                 Now, is there anything that I've overlooked or  
21                 should be addressed?

22   MR. VON KURSELL:        Would Your Ladyship consider an  
23           endorsement on the Warrant of Committal for the time  
24           to be served at the South Slave Correctional Center?  
25           It would be more proximate to his family.

26   THE COURT:                Well that's, of course, completely up  
27           to the correctional authorities, but I have no

1 difficulty. I'll direct the clerk to endorse the  
2 warrant to recommend that Mr. Pearson serve his time  
3 at the South Slave Correctional Center.

4 MR. VON KURSELL: Thank you, My Lady.

5 THE COURT: Is there anything further then,  
6 counsel?

7 MR. VON KURSELL: No, My Lady.

8 MR. O'HALLORAN: No, thank you.

9 THE COURT: All right. Mr. Pearson, I certainly  
10 hope you learn from this because, from all accounts,  
11 it's really -- you have a lot of potential, I guess  
12 is what it sounds like to me, and to essentially do  
13 some damage to your own life by engaging in this type  
14 of behavior really doesn't make very much sense. So  
15 I certainly hope that we won't see you before the  
16 Court again. I take it that completes everything we  
17 need to deal with at this assize?


18 MR. O'HALLORAN: Yes, it does.

19 MR. VON KURSELL: Yes, My Lady.

20 THE COURT: All right. I wish to thank everyone  
21 involved in the court proceedings and we will close  
22 court.

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

26   
27 **Sandra Burns R.P.R., C.R.R.**  
**Court Reporter**