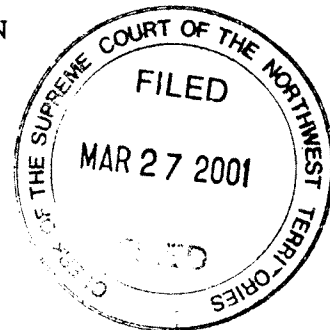


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- v -

Transcript of the Reasons for Sentence by The Honourable Justice J. Z. Vertes, sitting in Hay River, in the Northwest Territories, on the 16th day of February, A.D., 2001.

APPEARANCES:

Mr. J. O'Halloran: Counsel for the Crown

Mr. J. Brydon: Counsel for the Defence

1 THE COURT: I had the responsibility to
2 sentence the accused, Angus John Ekenale, last May for
3 the offence of manslaughter, and I now have the
4 responsibility to sentence him on the offence of
5 sexual assault for which he was convicted by a jury.

6 It appears evident to me that what has happened
7 in the last few years is that this man's past has
8 caught up with him. The manslaughter conviction last
9 year related to an incident that occurred in 1971.
10 This sexual assault conviction relates to incidents
11 occurring between 1986 and 1993. He was previously
12 convicted of a sexual assault, this was in 1993, for
13 offences dating back to the early 1980s. So indeed
14 perhaps there is some truth in the old adage that one
15 can never truly escape their past, and now Mr. Ekenale
16 is called to account for that past conduct.

17 Sentencing is always difficult when one is trying
18 to determine an appropriate sentence for a crime
19 committed many years ago. It would be particularly
20 difficult if a person led a blame-free life in the
21 years in between. That is not the situation here, but
22 it is significant that the most serious conviction on
23 his record of course predates these offences.

24 Generally speaking the fact that an offence,
25 particularly a sexual offence against a young child,
26 the sentencing for that should be no different today
27 than what it would be if the crime had been committed

1 yesterday, and so it is on that basis that I take
2 Crown counsel's recommendation into account, his
3 recommendation that an appropriate sentence be three
4 and a half years in a penitentiary.

5 The allegations involved in this sexual assault
6 offence concern three incidents. The complainant
7 related three incidents that occurred when she was
8 between the ages of 6 and 12, two incidents of what I
9 will call sexual touching or molestation, and one
10 incident of sexual intercourse at a time when she was
11 ten years old.

12 It is true that we cannot be certain, because we
13 cannot ask the jury, whether they accepted all three
14 incidents as having been proven, because all three
15 incidents were incorporated into one count. In a
16 situation such as that it is incumbent upon me to try
17 and determine the rational conclusions that can be
18 drawn from the jury's verdict. In my opinion the only
19 rational conclusion is that the jury did accept the
20 evidence of the complainant as to all three incidents.
21 I think it would be irrational to think that the jury
22 would have a doubt about her evidence as to one
23 incident and yet accept her evidence as to one or
24 other incident. It seems to me if they would have
25 doubted her story on one incident they would have
26 doubted her story on all of the incidents. So it
27 seems to me that the jury did find her credible and

1 certainly accepted her evidence as sufficient to
2 ground a conviction. So I will deal with this case as
3 one involving a very serious act of rape and two acts
4 of molestation.

5 There is a significant aggravating factor, of
6 course, in that the accused was the complainant's
7 uncle at the time, uncle by marriage, that is a
8 serious breach of trust; the young age of the
9 complainant is a particularly aggravating
10 circumstance; and there has been nothing in evidence
11 before me to show the slightest remorse on the part of
12 the accused. That is not an aggravating factor, of
13 course, it is his right to proclaim his innocence,
14 although it is readily apparent by the jury's verdict
15 that they rejected his denials made under oath as to
16 any type of misconduct with Maureen Deneron.

17 The record consists of nine convictions dating
18 between 1978 and 2000. The 2000 conviction is the
19 manslaughter conviction for the offence which occurred
20 in 1971. Among the convictions are several crimes of
21 violence, including the sexual assault conviction in
22 1993 that I have already mentioned for which he was
23 sentenced to three years in prison, and a further
24 sexual assault conviction in 1995 for which he was
25 sentenced to one year consecutive. This is
26 particularly aggravating, of course, because it shows
27 a pattern of conduct relevant to and similar to the

1 conduct for which he has been convicted today,
2 although I have not been told whether those other
3 offences involved children in any way.

4 If I were sentencing this man simply on this
5 particular offence I think the Crown's recommended
6 sentence of three and a half years would indeed be an
7 appropriate one. This is a crime where deterrence and
8 denunciation must be emphasized, the community's
9 abhorrence of this type of conduct must be validated,
10 and indeed a lengthy incarceration sentence is the
11 only appropriate measure.

12 I take into account the fact that the accused is
13 an aboriginal of relatively traditional ways, although
14 as I said at his sentencing in May, if I recollect
15 accurately, I did not receive any submissions as to
16 any particular systemic or background factors that led
17 to this man being in court today. The crime for which
18 he has been convicted is certainly not culturally
19 specific, it runs through all cultures, unfortunately,
20 and indeed it is the type of crime for which, whether
21 one is an aboriginal or a nonaboriginal, the sentence
22 will be in most cases very much the same.

23 Among the principles of sentencing in the
24 *Criminal Code* which I must take into consideration is
25 what has been labelled the totality principle. The
26 *Criminal Code* says that where consecutive sentences
27 are imposed the combined sentence should not be unduly

1 long or harsh. The statement of this principle, or
2 the rationale for this principle, is to require a
3 sentencer who has passed a series of sentences, each
4 properly calculated in relation to the offence for
5 which it is imposed, and each properly made
6 consecutive, to review the aggregate sentence and
7 consider whether the aggregate sentence is just and
8 appropriate.

9 In my view, even though I am sentencing the
10 accused today, some nine months after the manslaughter
11 conviction, I must still give consideration to this
12 principle. I agree with counsel that the sentence I
13 impose should be consecutive to the five-year sentence
14 that he is currently serving for manslaughter. But I
15 do not see any distinction in the application of the
16 totality principle between whether I would have
17 sentenced him on these two offences, that is the
18 manslaughter offence and the sexual assault offence,
19 at the same time, or the fact that I am sentencing him
20 now nine months later for a separate offence, but one
21 which will be added onto the manslaughter offence. So
22 it is still a factor I must consider.

23 In my opinion, having regard to this man's age, I
24 am of the view that a total combined sentence of eight
25 and a half years would be excessive, and so for that
26 reason I have decided to impose a sentence, while not
27 as relatively short as defence counsel suggested,

1 somewhere in between.

2 Stand up, Mr. Ekenale. Does your client have
3 anything he wishes to say, Mr. Brydon?

4 MR. BRYDON: No, he doesn't, Sir.

5 THE COURT: On this conviction I sentence you
6 to serve a term of imprisonment of two years, that
7 sentence will be consecutive to the sentence you are
8 currently serving; do you understand? I am sure your
9 counsel will explain it to you. You may sit down.

10 MR. BRYDON: Could I ask that a recommendation
11 be put on the warrant of committal that he serve it in
12 the North where his family is.

13 THE COURT: I made a similar recommendation
14 last time, I would think the correctional authorities
15 will take it into account, but a similar
16 recommendation will be endorsed on this warrant. The
17 DNA order will go as requested by Crown counsel. I
18 suggest, Mr. O'Halloran, that you prepare the formal
19 order and have Mr. Brydon sign off on the form and
20 contents, and then you can submit it.

21 MR. O'HALLORAN: Thank you, Sir.

22 THE COURT: In the circumstances there will
23 be no victim of crime fine surcharge. Anything else
24 we need to deal with?

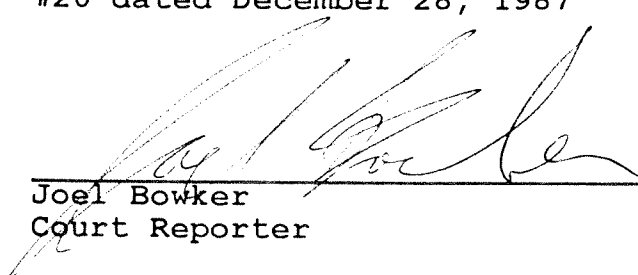
25 MR. BRYDON: The prohibition.

26 THE COURT: Is he not under one already?

27 MR. BRYDON: He is.

1 THE COURT: How long is that one, for life?
2 MR. BRYDON: I think it's ten years off the
3 manslaughter.
4 THE COURT: Ten years. Well, is the Crown
5 requesting a firearm prohibition?
6 MR. O'HALLORAN: Not given what's already in
7 place, Sir.
8 THE COURT: All right. Thank you. Is that
9 all, gentlemen?
10 MR. O'HALLORAN: That's it, Sir.
11 MR. BRYDON: Yes.
12 THE COURT: Thank you very much for your
13 work. We are closed.

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16
17 Certified Pursuant to Practice Direction
18 #20 dated December 28, 1987

19
20 
21 _____
22 Joel Bowker
23 Court Reporter
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