

R. v. Vital, 2000 NWTSC 43

CR 03843

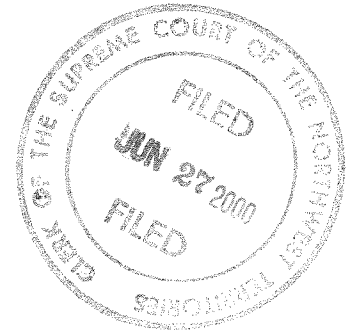
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

TERRY JAMES VITAL



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Transcript of Reasons for Sentence (Oral) delivered by  
Justice J. E. Richard, in Yellowknife, in the Northwest  
Territories, on the 23rd day of June, A.D. 2000.

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APPEARANCES:

MR. M. SCRIVENS:	On behalf of the Crown
MR. T. BOYD:	On behalf of the Defence

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Charge under s. 267(b) C.C.



1 THE COURT: Terry James Vital has been convicted  
2 by a jury of a serious criminal offence, assaulting  
3 his nine-month-old child and causing bodily harm to  
4 him, contrary to Section 267 of the Criminal Code.  
5 This offence is punishable by up to ten years  
6 imprisonment in a federal penitentiary in southern  
7 Canada.

8 This is a sad and disturbing case and it is  
9 certainly not an easy task to impose an appropriate  
10 sentence.

11 Mr. Vital and his common-law wife, Alice Black,  
12 had twin boys born to them prematurely on September  
13 16th, 1998. Mr. Vital is 25 years of age. His wife,  
14 Alice Black, did not testify at the trial and I do not  
15 have evidence of her age, but I am presuming that she  
16 is a young parent as well.

17 In the first few months of the twins' lives, the  
18 family lived in the Dogrib communities of Rae Edzo and  
19 Rae Lakes with extended family. One of the twins,  
20 Darren, developed medical problems and eventually was  
21 taken to University Hospital in Edmonton. It turned  
22 out that among other medical problems, the infant  
23 child had a growth or tumor in his stomach, and over a  
24 number of months in early 1999 Mr. Vital and/or his  
25 wife had to take Darren out to Edmonton for  
26 chemotherapy treatment at the University Hospital.  
27 There were apparently three such trips in May, June

1 and July of 1999. Between those trips, Mr. Vital and  
2 his wife and Darren resided in an apartment in  
3 Yellowknife.

4 At the time of the July visit to the University  
5 Hospital in Edmonton, medical staff there noticed that  
6 the child Darren had multiple bone fractures on his  
7 young body that were considered unrelated to the  
8 cancer from which the child was suffering. The RCMP  
9 in Yellowknife were notified, and upon Mr. Vital's  
10 arrival at the airport in Yellowknife on July 16th, he  
11 was arrested.

12 During police interviews on July 16th and July  
13 17th, Mr. Vital admitted that he had in the previous  
14 weeks and months on occasion shook his baby too hard  
15 out of frustration and anger when the baby was crying,  
16 and out of frustration and anger, he said, that his  
17 wife Alice was not helping out with the baby. At  
18 points during the interview with police, which was  
19 videotaped, the offender Mr. Vital demonstrated to the  
20 police officers how he had shaken the baby.

21 Medical evidence at the trial indicated that baby  
22 Darren sustained multiple rib fractures, a fractured  
23 left wrist, a fracture of the right tibia, a fracture  
24 of the left fibula, and a fracture of one of his toes.  
25 These are the injuries which constitute the bodily  
26 harm aspect of the crime of which Mr. Vital was  
27 convicted by the jury. There was expert evidence

1 before the jury to the effect that these types of  
2 injuries are consistent with those seen in cases of  
3 child abuse at the hands of a caregiver.

4 One of the injuries, the broken wrist, occurred  
5 in early June 1999. It left the wrist of this infant  
6 child bent at a 30 to 40 degree angle. The offender  
7 Mr. Vital took his son Darren to the Stanton  
8 Yellowknife Hospital on June 26th, 1999, because of a  
9 lump on the wrist which resulted from the healing of  
10 the fracture, so Mr. Vital was aware at least of that  
11 injury at that time.

12 Fortunately, we rarely see shaken-baby syndrome  
13 cases before the courts in this jurisdiction. There  
14 are published reports of such cases from other  
15 jurisdictions.

16 In some of those cases, an attempt is made to  
17 categorize the offenders who commit this particularly  
18 horrible crime. In my respectful view, this offender  
19 generally falls into one of those categories; namely -  
20 and here I am using the description given by Justice  
21 O'Neill in the *Marks* case:

22 The application of force ... where a parent ... of  
23 a child is immature and is unskilled in matters of  
24 child care and acting out of emotional upset,  
25 frustration, or impatience does not fully  
26 appreciate the serious injuries which might  
27 result.

26 Having observed this offender Terry James Vital  
27 when giving testimony at his trial and on the

1 videotaped interviews with the police on his arrest  
2 last July, I am satisfied that this offender and this  
3 offence generally falls within that category.

4 The reported court cases from other jurisdictions  
5 state clearly and correctly, in my view, that the  
6 primary sentencing objective must be the protection of  
7 vulnerable children. As Justice McClung stated in the  
8 *Hagger* case almost 20 years ago, "The dominant  
9 sentencing consideration in proven infant assault  
10 cases is the protection of those who cannot protect  
11 themselves."

12 The offender before the court is a Dogrib man  
13 from Rae Edzo and is 25 years of age. He has little  
14 formal education and a sporadic work history. He has  
15 a criminal record which includes crimes of violence.  
16 In 1992, as a young offender, he was convicted for  
17 assault causing bodily harm and received a  
18 probationary sentence. In 1993, as an adult, he was  
19 convicted of break, enter and commit an assault with a  
20 weapon and received a sentence of four months'  
21 imprisonment. In 1996 he was convicted again of  
22 break, enter and commit. In 1997 he was convicted for  
23 common assault and received a \$300 fine. In May of  
24 this year he was convicted again of common assault and  
25 received a sentence of one month imprisonment. This  
26 last entry on his criminal record relates to an  
27 assault on his common-law wife Alice Black which

1 occurred in January of this year.

2 Apart from the one month sentence that he served  
3 for the spousal assault, Mr. Vital has spent a total  
4 of seven and a half months in pre-trial custody  
5 awaiting his trial on the charge for which he is today  
6 being sentenced. I take that into consideration in  
7 deciding on an appropriate sentence, as well as the  
8 fact that Mr. Vital is an aboriginal offender with his  
9 particular personal and cultural characteristics and  
10 background.

11 From my direct observations of Mr. Vital during  
12 the trial and sentencing hearing and in particular  
13 from viewing the videotaped interview with the police  
14 in July of 1999, I conclude without hesitation that he  
15 loves his children very much. In the videotaped  
16 interview, he displayed, in my view, genuine emotions  
17 of sorrow, remorse, and hopelessness. I find that he  
18 was generally cooperative with the police and trying  
19 to tell the truth about what he had done, difficult as  
20 that was. He frankly admitted that he took out his  
21 anger on his child instead of his wife. His  
22 statements to the police indicate that he is very  
23 devoted to his wife and to his children.

24 The child Darren is presently under a protection  
25 or supervision order and in the care of Social  
26 Services who have placed Darren with foster parents in  
27 Rae Edzo. The child's cancer is, happily, in

1 remission.

2 I repeat that the overriding sentencing principle  
3 here is the protection of helpless, defenceless  
4 children. Also, as stated in the *Evans* case that was  
5 referred to by counsel, child abuse, whether caused  
6 intentionally, recklessly, or out of frustration and  
7 anger must be condemned. In my view, the application  
8 of those principles require a further period of  
9 incarceration in this case followed by a period of  
10 probation. Mr. Vital needs some time and some  
11 assistance to improve his parenting skills and his  
12 anger management. Hopefully, he can access that kind  
13 of treatment or counselling both while he is in  
14 custody and while on probation after release.

15 Please stand now, Mr. Vital.

16 Terry James Vital, for the crime that you have  
17 committed, assaulting your son and causing bodily harm  
18 to him, it is the sentence of this court that you be  
19 imprisoned for a period of 12 months. That term of  
20 imprisonment will be followed by 24 months of  
21 probation. In addition to the statutory conditions of  
22 probation, you will seek and maintain steady  
23 employment; you will attend such counselling sessions  
24 or take such treatment as recommended by your  
25 probation officer with a view to improving your  
26 parenting skills and anger management. There will be  
27 the usual ten year firearms prohibition order under



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Section 109 Criminal Code, and in the circumstances  
there will be no victim fine surcharge.

You may sit down, Mr. Vital.

Anything further in this case, counsel?

MR. SCRIVENS:                   No, My Lord.

MR. BOYD:                       No, Sir.

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Certified correct to the best of  
my skill and ability.

*Annette Wright*

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Annette Wright, RPR, CSR(A)  
Court Reporter

