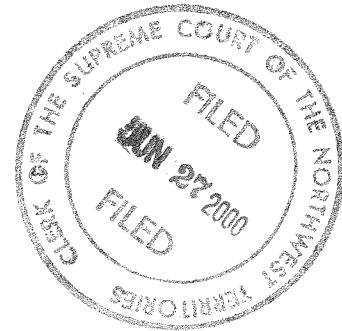


R. v. Avadluk, 2000 NWTSC 45

CR 03859

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- and -

NOEL JUNIOR AVADLUK

Transcript of Reasons for Sentence (Oral) delivered by
Justice V. A. Schuler, sitting in Yellowknife, in the
Northwest Territories, on the 19th day of June, A.D. 2000.

APPEARANCES:

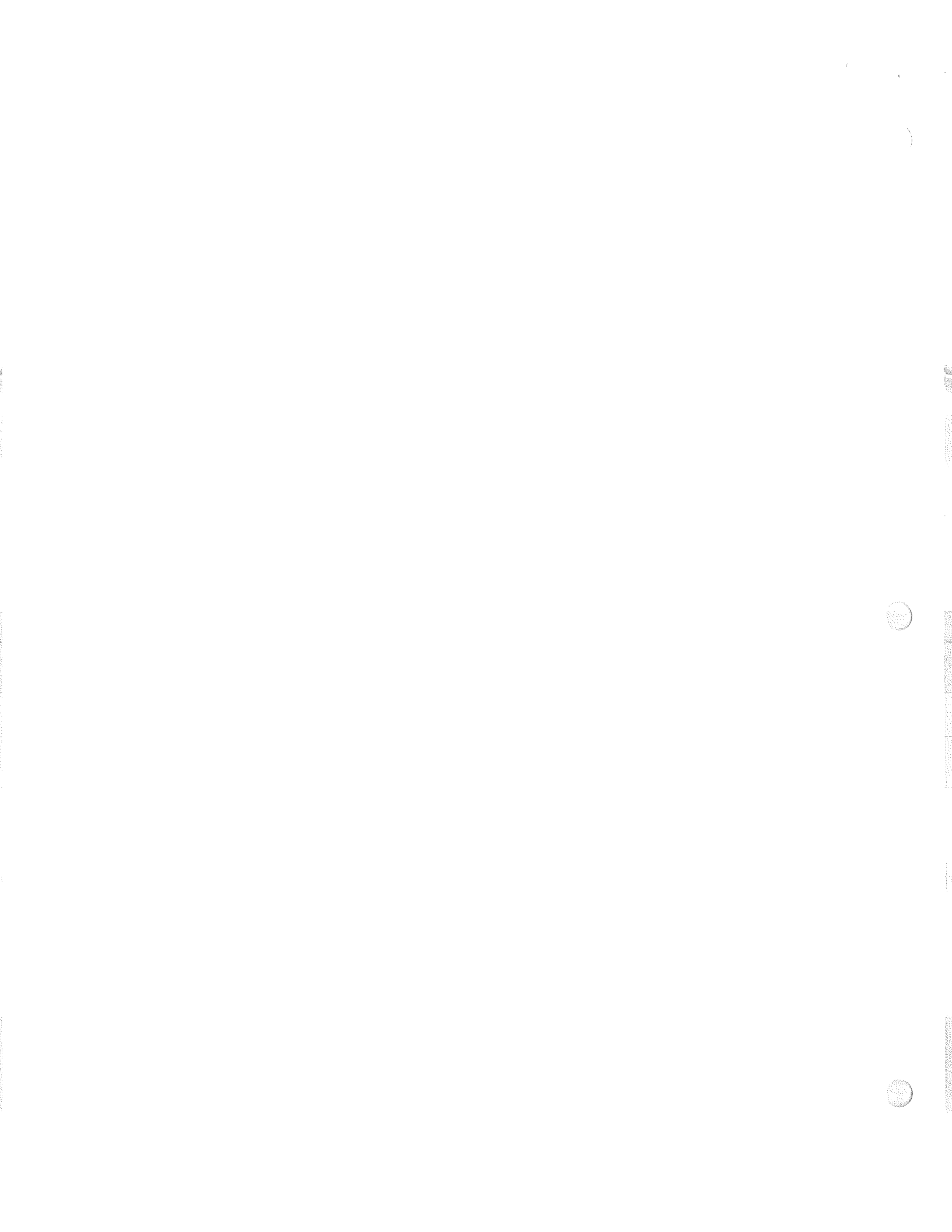
MR. M. SCRIVENS:

On behalf of the Crown

MR. C. REHN:

On behalf of the Defence

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



1 THE COURT: The jury found Mr. Avadluk guilty of
2 assault causing bodily harm arising out of an incident
3 on October 12th, 1999, where he beat his wife in the
4 presence of his nine-year-old stepdaughter. I bear in
5 mind that the jury found Mr. Avadluk guilty only on
6 that count and that they found him not guilty on the
7 incident that the complainant testified happened in
8 September.

9 From the jury's verdict, I conclude that the jury
10 accepted Lori Avadluk's evidence about what happened
11 on October 12th, that being that after Thanksgiving
12 dinner Mr. Avadluk and his wife had gone to bed, they
13 were discussing their marriage, that Mr. Avadluk
14 became agitated, angry, and started choking Lori
15 Avadluk with his forearm, holding it against her until
16 she was having difficulty breathing, that he held her
17 down on the bed and subsequently beat her on the head
18 and face with a closed fist and later kicked her.
19 During this, she was begging him to stop. Her
20 daughter was screaming. At one point Ms. Avadluk
21 tried to call the police and Mr. Avadluk stopped her.
22 At another point the daughter tried to call the police
23 and Mr. Avadluk ripped the phone out of the wall.

24 Mr. Avadluk told a different version of the
25 events, one that he has referred to here today again.
26 But, in my view, considering the jury's verdict and my
27 own assessment of the evidence and the self-defence

1 argument that was raised, it seems clear to me that
2 the jury accepted what Lori Avadluk said happened. So
3 it is on that basis, and I think that is the basis
4 from my own assessment of the evidence as well, that I
5 will proceed to sentence Mr. Avadluk.

6 The victim impact statement does go farther in
7 talking about injuries than what Ms. Avadluk had
8 testified to in court. In her evidence, she testified
9 with respect to the injuries that she continues to
10 suffer or that she suffered after the date in
11 question. She said that it was five or six weeks
12 before the bruising was completely gone, that she
13 still cannot brush her hair because of swelling on her
14 scalp, and that her forearms remain lumpy and sore -
15 this is obviously all as of the date at the beginning
16 of the trial on June 8th - and that her right ear
17 wakes her up with pain. This is a somewhat different
18 from what she says in the victim impact statement. In
19 any event, I am going to accept what she said at trial
20 as being the injuries. In my view, clearly they are
21 lasting injuries. Here we are some seven months later
22 and she was still suffering from this beating. She
23 also refers to other effects of the beating in terms
24 of thinking about it in terms of having to leave the
25 family home in Hay River. Clearly, this incident has
26 had a lasting effect on her.

27 This is a case, obviously, of spousal assault.

1 It is aggravated by the fact that the beating took
2 place in the presence of a child. In fact, one of the
3 most distressing things about this and similar cases
4 is hearing about a young child being subjected to such
5 an incident and then having to herself get involved in
6 terms of trying to save her mother and contact the
7 police. It is sad to think that a child grows up
8 experiencing that and also to think what the effects
9 of all of this might be on that child.

10 This is not the first time that Mr. Avadluk has
11 beaten his spouse. The jury heard evidence led by the
12 defence that the Avadluks were married the day after
13 Mr. Avadluk was released from prison after serving
14 eight months for having assaulted Lori Avadluk in
15 1999. The rest of the record includes five other
16 convictions for spousal assault starting in 1994, most
17 of the convictions occurring in 1996. Obviously there
18 is a continuing history of spousal assault. In light
19 of that, one of the things I have to be concerned
20 about is protecting the community, which in this case
21 specifically means women that Mr. Avadluk might get
22 involved with, from being assaulted by him.

23 The record goes back to 1985. From 1985 to 1993
24 it consists of essentially property offences, mostly
25 property offences. It certainly is an unenviable
26 record, but it is the more recent convictions that are
27 the main concern for this court because of the offence

1 that he is currently being sentenced for.

2 I have heard that Avadluk is 27 years old, that
3 he has a grade ten education, and that he comes from
4 the Kugluktuk area. He does have an employment
5 history, which is to his credit. He has had an
6 alcohol problem. The jury heard evidence about how he
7 became involved with Ms. Avadluk when she was his
8 alcohol counsellor. Mr. Avadluk spoke about the
9 problems he has had with alcohol, and the one thing I
10 have to note is that this offence took place when he
11 was not under the influence of alcohol. From what I
12 recall, his evidence was that he was concerned that he
13 might go back to drinking and that he wanted to go and
14 take more treatment even though he was not actually
15 drinking at the time the incident occurred. There was
16 some discussion about that with Ms. Avadluk.
17 Nevertheless, he was not intoxicated and he had not
18 been drinking when this incident occurred, so he knew
19 full well what he was doing.

20 I have seen the letters which have been submitted
21 by the defence on sentencing. I am not sure what to
22 make of them. My task here really is not to make
23 judgments about Ms. Avadluk or her conduct or her
24 relationship with Mr. Avadluk. I tend to agree with
25 Crown counsel that the letters, and I think also I
26 would say based on her evidence at trial, that she
27 obviously has some confused and conflicted feelings

1 about Mr. Avadluk. I suppose one might say that some
2 of what she writes seems contradictory, but again I am
3 not sure that that is all that uncommon in situations
4 like this. Obviously these two people had a very
5 difficult relationship and it is unfortunate that they
6 could not have found a way to deal with it. It is
7 particularly unfortunate that Mr. Avadluk could not
8 have found a way to deal with it short of violence,
9 but he had been violent to his spouses before and he
10 had served time before. He knew full well what he was
11 getting into and I do not in any way think that blame
12 can be cast on Ms. Avadluk. Whatever her
13 difficulties, the fact is that it was Mr. Avadluk who
14 decided to get violent and that is what I have to
15 sentence him for.

16 I do take into account the specific facts in this
17 case and the aggravating facts that Mr. Avadluk had
18 only been released from jail for this same offence in
19 July, only a few months before October when this
20 happened. It seems to me that based on the evidence
21 that he had not been drinking, that he had made some
22 effort to rehabilitate because alcohol had been a
23 problem for him in the past, so I do take that into
24 consideration. I also take into account the other
25 aggravating factors that I have referred to.

26 The only really mitigating factor in this case is
27 the fact that he spent seven months in remand. I

1 believe it is the *Proulx* case from the Supreme Court
2 of Canada where it was recently noted that it is quite
3 common for courts to accord the face amount of remand
4 time with double the value, so to speak, when taking
5 it into account when sentencing.

6 I have considered all of the factors that I have
7 referred to, Mr. Avadluk's own background, the
8 circumstances of this assault itself and the remand
9 time.

10 Would you stand up, please, Mr. Avadluk.

11 Mr. Avadluk, I sentence you to serve one year in
12 jail. There will be a firearm prohibition order. I
13 have not heard any comments on that, I have not been
14 given any reason why that should not be made. There
15 will be a firearm prohibition order under Section 109
16 of the Criminal Code. That will prohibit you from
17 possession of weapons, ammunition and explosives. It
18 will start today and it will continue for ten years
19 after your release from imprisonment on this charge.

20 I take it there is no need for any specific time
21 to surrender weapons?

22 MR. REHN: No, My Lady.

23 THE COURT: All right, the surrender will just
24 be forthwith to the RCMP.

25 Now, is there anything else that I need to deal
26 with?

27 You can sit down, Mr. Avadluk.

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The victim of crime surcharge will be waived.

MR. SCRIVENS: There's nothing further in this
matter.

THE COURT: All right, thank you very much,
counsel.

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Certified pursuant to Practice
Direction #20 dated December 18,
1987.

Awright

Annette Wright, RPR, CSR(A)
Court Reporter

