

R. v. Ipeelee, 2001 NWTSC 33

CR 03837

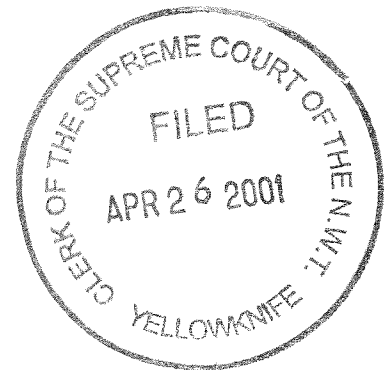
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

MANASIE IPEELEE



Transcript of the Oral Reasons for Sentence by The Honourable Justice J.E. Richard, at Yellowknife in the Northwest Territories, on March 16 A.D., 2001.

APPEARANCES:

Ms. B. Schmaltz:

Counsel for the Crown

Mr. T. Boyd:

Counsel for the Accused

1 THE COURT: The offender Manasie Ipeelee was
2 convicted in September 2000 of a serious sexual
3 assault causing bodily harm to the victim. The
4 subject offence was committed only a few months
5 after Mr. Ipeelee was released from penitentiary
6 where he had served a full penitentiary term for
7 another violent sexual assault.

8 Following his most recent conviction, the Crown
9 sought and obtained an order of the Court directing
10 a psychiatric assessment of the offender for
11 purposes of a possible application to have the
12 offender declared to be either a dangerous offender
13 or a long-term offender under the provisions of
14 Part 24 of the *Criminal Code*.

15 Dr. Dickey's report was filed with the Court on
16 December 1st, 2000, and now the Crown has advanced
17 its application to have the offender declared to be
18 a long-term offender under Section 753.1 of the
19 *Criminal Code*.

20 I shall review aspects of Mr. Ipeelee's history
21 of criminal behaviour in the context of the Crown
22 submission that the evidence shows a certain pattern
23 of repetitive behaviour as contemplated by
24 Section 753.1(2)(b) of the *Criminal Code*.

25 The Crown seeks a finding of long-term offender
26 and if that is granted, seeks a sentence of ten
27 years' imprisonment for the predicate offence

1 followed by another ten years of supervision in the
2 community.

3 The offender is an Inuk who was born and raised
4 in Iqaluit, Nunavut. He is now 29 years of age. His
5 mother died when he was only five years old and he
6 was raised by his maternal grandparents. He has had
7 a dysfunctional lifestyle since his early teens. He
8 dropped out of school in Grade 7 or 8.

9 In the past ten to 12 years, he has been in and
10 out of Youth Court, Adult Court, young offenders'
11 facilities and adult correctional facilities and
12 penitentiary.

13 Despite his age, he has no employment history.

14 By his own admission, he has been a chronic
15 abuser of drugs, particularly alcohol, throughout
16 his youth and adult life.

17 Although his first language is Inuktitut, he is
18 now capable of functioning in the English language.

19 He had approximately three dozen convictions as
20 a young offender. Most of those convictions were for
21 property offences such as break and enter and theft
22 and joyriding with snowmobiles. His youth record
23 however does display a disregard for the property
24 rights of other people, and the breaches of
25 probation and escape custody convictions display a
26 lack of respect for court orders and for authority
27 generally.

1 Those types of offences; that is, property
2 offences, breach of court orders, and escape
3 custody, continued into his adult years. However, he
4 also started venturing into crimes of violence, and
5 I now refer to those crimes in particular.

6 In December 1992, the offender pleaded guilty
7 to assault causing bodily harm. At the time of the
8 incident, the offender was intoxicated. He and a
9 friend beat up a man who was refusing them entrance
10 to his home. During the fight, the offender hit the
11 victim over the head with an ashtray and also with a
12 chair causing injury to the victim. For this
13 particular crime, the offender received a sentence
14 of 21 days imprisonment.

15 In December 1993, the offender again pleaded
16 guilty to assault causing bodily harm. This incident
17 occurred outside a bar in Iqaluit. The offender was
18 intoxicated. His victim was extremely intoxicated.
19 During the fight, the offender was seen to kick the
20 victim in the face at least ten times and to
21 continue kicking the victim in the face and punching
22 him in the mouth when the victim was unconscious and
23 not resisting. The victim sustained injuries and was
24 hospitalized. Mr. Ipeelee received a sentence of
25 five months imprisonment. At the time of this
26 offence, he was on a period of probation.

27 In November 1994, Mr. Ipeelee pleaded guilty to

1 aggravated assault. This crime also arose from an
2 altercation outside the same bar in Iqaluit between
3 an intoxicated Manasie Ipeelee and an intoxicated
4 victim. Again, Mr. Ipeelee administered many blows
5 and kicks to a helpless victim and with full force
6 stomped on the victim's face. The victim's face was
7 swollen beyond recognition, and he suffered a broken
8 jaw and had to be sent to Montreal for treatment.
9 Mr. Ipeelee received a sentence of 14 months
10 imprisonment. At the time of committing this serious
11 assault, he was on a period of probation.

12 Mr. Ipeelee obtained early release from his 14
13 month sentence in the fall of 1995. Approximately
14 three weeks later, while still technically serving
15 his sentence, he committed a serious crime of sexual
16 assault. The female victim had been drinking in her
17 apartment in Iqaluit with Mr. Ipeelee and others and
18 passed out from intoxication. Mr. Ipeelee and
19 another man were seen carrying her into her bedroom.
20 Mr. Ipeelee was later seen having sex with the
21 unconscious victim in her bed. For this crime,
22 Mr. Ipeelee received a sentence of 24 months
23 imprisonment in April 1996. He also received other
24 consecutive sentences for other matters for a total
25 sentence in excess of 33 months.

26 He served every day of that sentence as the
27 Corrections Canada officials deemed him to be a high

1 risk to reoffend if he was given early release.

2 I have reviewed the contents of the many
3 progress summaries, program assessments, and
4 performance reports on the Corrections Canada files
5 between 1996 and 1999 that have been filed as
6 exhibits on this hearing.

7 Those reports describe various programs and
8 courses that were accessed by Mr. Ipeelee during his
9 incarceration and some that were refused by him.

10 It appears that there were periods of time when
11 Mr. Ipeelee was in denial with respect to his sexual
12 assault conviction and other periods when he was
13 able to gain insight into his dysfunctional life and
14 antisocial behaviour.

15 Throughout his incarceration, he seemed to
16 acknowledge that he was an alcoholic and also that
17 he was unable to control his violent behaviour when
18 he drank alcohol.

19 One of the many professionals or counsellors
20 who dealt with him prior to his release in February
21 1999 stated simply, in layman's terms, that
22 Mr. Ipeelee was a low risk to reoffend if he stayed
23 clean and sober but if he reverted back to substance
24 abuse, he was a high risk to reoffend.

25 Mr. Ipeelee decided to relocate to Yellowknife
26 upon serving his sentence rather than to return to
27 his home community of Iqaluit.

1 Just prior to his release on February 5th,
2 1999, the area director of Corrections Services of
3 Canada wrote to the RCMP in Yellowknife to advise of
4 this offender's pending arrival in Yellowknife. In
5 that letter, it was stated,

6 "While incarcerated, this
7 offender has made limited
8 progress in programming and
9 has not addressed his sexual
10 behaviour in any way. His
11 criminal history indicates that
 alcohol is regularly involved in
 his offences. He is considered a
 high risk to reoffend since he
 has not completed sex offender
 programming."

12 Evidence before me indicates that Mr. Ipeelee
13 was drinking within one half hour of arriving in
14 Yellowknife. He was arrested for public intoxication
15 on the evening of the very day that he arrived in
16 Yellowknife following his release from penitentiary,
17 and again 24 hours later. In the next six months, he
18 was arrested at least nine more times for public
19 intoxication.

20 On August 21st, 1999, he committed the
21 predicate offence of sexual assault causing bodily
22 harm which led to his conviction and to the present
23 Crown application.

24 Although for a few months after he came to
25 Yellowknife he lived in an apartment, by August 21st
26 he was homeless and living on the street.

27 On the evening in question, he was again

1 intoxicated. He went into an abandoned van located
2 behind the homeless shelter, a van that was
3 apparently regularly used by the homeless. In that
4 van, the victim was sleeping.

5 Mr. Ipeelee's victim this time was a
6 50-year-old woman who, by her own description, was a
7 homeless person or street person.

8 She testified that she had been drinking with
9 friends on the day in question and by the early
10 evening, she was more tired than intoxicated. She
11 went to sleep on a mattress in that van. She awoke
12 to find Manasie Ipeelee taking her pants off. She
13 struggled with him, a fight ensued. He was punching
14 her on the face. She tried to get away from him but
15 he pulled her back onto the mattress. She cried out
16 for help but he told her to shut up or he would kill
17 her. He then raped her.

18 The victim was able to escape after Mr. Ipeelee
19 fell asleep. The police were called and the victim
20 was taken to the hospital to be treated for her
21 injuries.

22 She had lacerations to her forehead and lip,
23 which required sutures, and abrasions to her arms
24 and legs.

25 Mr. Ipeelee was arrested at the scene and has
26 been in custody since that time, a period of 19
27 months.

1 This summary of Mr. Ipeelee's crimes of
2 violence shows a consistent pattern of Mr. Ipeelee
3 administering gratuitous violence against
4 vulnerable, helpless people while he is in a state
5 of intoxication.

6 It is clear that society must be protected from
7 him, that it is absolutely necessary to take steps
8 to control his behaviour. This means, at a minimum,
9 keeping him in a controlled environment such as a
10 correctional facility for a substantial period of
11 years where he can possibly receive treatment and
12 presumably where he has no access to alcohol.

13 Dr. Robert Dickey is a forensic psychiatrist
14 from Toronto, Ontario who gave opinion evidence at
15 this hearing. Dr. Dickey has a great deal of
16 experience working with high-risk offenders in the
17 federal penitentiary system, in risk assessment
18 testing, and in diagnosing mental disorders. Dr.
19 Dickey has given expert testimony in this
20 jurisdiction and other jurisdictions on dangerous
21 offender and long-term offender applications.

22 Dr. Dickey made a psychiatric assessment of
23 Manasie Ipeelee and his written assessment report is
24 filed as Exhibit S-3 on this hearing. He
25 supplemented that written report with viva voce
26 testimony.

27 It is Dr. Dickey's opinion that Mr. Ipeelee

1 does not suffer from any major mental illness. His
2 intelligence level is average to above average.

3 Dr. Dickey is of the view, however, that
4 Mr. Ipeelee does suffer from both an antisocial
5 personality disorder and an alcohol abuse disorder.
6 His alcohol abuse disorder is quite severe in Dr.
7 Dickey's view.

8 Dr. Dickey does not diagnose Mr. Ipeelee has
9 having any specific sexual disorder.

10 Dr. Dickey scored Mr. Ipeelee on a number of
11 risk measures. One of those is the Psychopathy
12 Checklist Revised, PCL-R.

13 This instrument is a kind of codification of
14 the experts' knowledge or understanding of
15 psychopathy. It has been accepted by professional
16 psychiatrists in North America as being valid and
17 reliable in assessing the criminality of individuals
18 and specifically their willingness to be
19 exploitative interpersonally and the extent of their
20 internal controls.

21 Use of this PCL-R checklist is simply an
22 attempt to define how closely an individual
23 resembles the ideal psychopath.

24 The perfect psychopath would score 40 out of 40
25 but an individual would usually be diagnosed as
26 psychopath with a score of 30 or more.

27 Manasie Ipeelee's score on this instrument is

1 22.1. This places him just below the average score
2 for federal penitentiary inmates. Dr. Dickey does
3 not diagnose Manasie Ipeelee as a psychopath.

4 Dr. Dickey also employed a number of actuarial
5 tools in measuring Mr. Ipeelee's risk of
6 reoffending. In particular, he utilized actuarial
7 instruments known as Risk Assessment Guide, the Sex
8 Offender Risk Assessment Guide, and the Static 99.

9 These instruments indicated to Dr. Dickey that
10 Mr. Ipeelee represents a high moderate to high risk
11 for violent reoffence and a high moderate risk for
12 sexual reoffence.

13 Quite apart from these actuarial results, it is
14 Dr. Dickey's opinion that, without intervention with
15 respect to Mr. Ipeelee's alcohol consumption, his
16 risk of committing further violent offences is high
17 and his risk of committing further sexual offences
18 is at least moderate.

19 Dr. Dickey makes this independent diagnosis
20 based on his own review of the file materials and on
21 his extensive interviews with Manasie Ipeelee. As
22 the good doctor indicated, these statistical models,
23 or actuarial tools, do not and should not replace
24 using one's simple common sense.

25 I find merit in that statement and for my part,
26 I am in general agreement with the doctor's opinions
27 with respect to the probability of Manasie Ipeelee

1 reoffending in the foreseeable future.

2 Dr. Dickey is of the view that there is a
3 reasonable possibility of eventual control or
4 reduction of the risk of Mr. Ipeelee's reoffending
5 in the community following a lengthy period of
6 incarceration if there is comprehensive supervision
7 in the community. And by that, he means if there
8 are the resources in the community for proper
9 supervision of Mr. Ipeelee. For example, he suggests
10 that any breaches in his alcohol abstention
11 condition would have to be seriously and immediately
12 dealt with as this is the major risk factor for
13 serious violent or sexual reoffending by Manasie
14 Ipeelee.

15 Dr. Dickey says that Manasie Ipeelee needs to
16 be highly supervised with respect to consuming
17 alcohol.

18 In addition to Dr. Dickey's report and
19 testimony, I have had the benefit of the trial
20 testimony, Mr. Ipeelee's testimony on this hearing,
21 and the many documents from the Corrections Services
22 Canada files referred to earlier.

23 Taking into consideration all of that evidence,
24 I am convinced that there is a substantial risk that
25 Manasie Ipeelee will reoffend. Indeed, if he has
26 access to alcohol, it is as certain as night follows
27 day.

1 For the protection of the public, it is
2 necessary to separate him from society for a lengthy
3 period of time. After that, I am satisfied that his
4 risk of reoffending when in the community can be
5 controlled with appropriate conditions of long-term
6 supervision.

7 The evidence before me, in particular the
8 circumstances of the five specific crimes of
9 violence that I have referred to, shows a pattern of
10 repetitive behaviour by Mr. Ipeelee indicating a
11 likelihood that he will cause injury or harm to
12 other members of the community in the future.

13 As to the predicate offence, it almost goes
14 without saying that any fit and appropriate sentence
15 for that crime would be well in excess of two years'
16 imprisonment.

17 With these findings, I am of the view that the
18 criteria or prerequisites under subsection (1) of
19 Section 753.1 of the *Criminal Code* are present in
20 this case. And for purposes of those statutory
21 provisions, I find Manasie Ipeelee to be a
22 "long-term offender".

23 I exercise my judicial discretion in that
24 regard after taking into consideration Mr. Ipeelee's
25 personal circumstances, the circumstances of his
26 criminal offences, and the principles of sentencing
27 enumerated in the *Criminal Code*.

1 As I understand counsel's submissions,
2 Mr. Ipeelee does not take issue with the proposition
3 that he requires long-term supervision in the
4 community following the serving of his sentence for
5 the predicate offence. The thrust of his counsel's
6 submissions is directed to the duration of the
7 determinate sentence to be imposed for the predicate
8 offence under Section 753.1(3)(a).

9 I accordingly turn now to the issue of the
10 appropriate duration of the period of incarceration
11 for the predicate offence.

12 In the determination of this part of the
13 Court's disposition, the Court is again bound by the
14 purpose, objectives, and principles of sentencing
15 that are set forth in the *Criminal Code* and in
16 precedent case law.

17 As Mr. Ipeelee's predicate offence is sadly of
18 a kind that is all too prevalent in this
19 jurisdiction, denunciation and deterrence are
20 particularly important principles.

21 Mr. Ipeelee's sentence for the sexual assault
22 of August 1999 must be proportionate to the gravity
23 of that crime and to Mr. Ipeelee's degree of
24 responsibility for it. In this regard, his
25 intoxication at the time is no excuse. This is a man
26 who was consistently told during his 33 months of
27 federal incarceration and who consistently himself

1 acknowledged that his drinking of alcohol would lead
2 to the commission of an offence and yet he was into
3 the booze within one half hour of getting off the
4 plane, and he continued to drink regularly until he
5 committed this offence six months later.

6 I have already referred to the fundamental need
7 to provide protection for the public from violent
8 behaviour.

9 It is an aggravating circumstance here that in
10 committing this offence, Mr. Ipeelee took advantage
11 of a sleeping, vulnerable victim.

12 Although his victim did not wish to present a
13 formal Victim Impact Statement to the Court on this
14 sentencing hearing, I am advised through Crown
15 counsel that the victim has yet to put this horrible
16 ordeal behind her and still suffers serious
17 emotional trauma whenever she is reminded of it.

18 Mr. Ipeelee's criminal record is also an
19 aggravating feature, in particular, the succession
20 of violent crime since 1992.

21 I specifically take note of the fact that
22 Mr. Ipeelee has been in remand custody for 19 months
23 already and must be given substantial credit for
24 that time.

25 Mr. Ipeelee is an aboriginal offender however
26 he had only limited exposure to the lifestyle of the
27 Inuit in his formative years living with his

1 grandparents. When Mr. Ipeelee testified at this
2 hearing, he did say that he wants to eventually
3 reconnect with family members and with his culture.
4 He is also aware of a new program and new facility
5 for Inuit offenders in Gravenhurst, Ontario, and he
6 is seeking to have access to that program. I also
7 made particular note of that part of his evidence
8 where he was attempting to correct an erroneous
9 impression, he says, in the file documentation that
10 he was abused in any way by his grandparents. He
11 says that he was not, that his grandparents did try
12 to teach him between right and wrong, and that it
13 was he and he alone who was responsible for getting
14 into trouble as a young person.

15 I will mention one further consideration that,
16 in my view, comes into play in the sentencing
17 process and that is that a period of incarceration
18 for an offender should be no longer than is
19 necessary in order to give effect to the purpose and
20 objectives of the sentencing process.

21 Please stand now, Mr. Ipeelee.

22 Manasie Ipeelee, for the crime of sexual
23 assault causing bodily harm committed by you on
24 August 21st, 1999, it is the sentence of the Court,
25 firstly, that you be imprisoned for a period of six
26 years.

27 I further order that you be supervised in the

1 community for a period of ten years after you have
2 finished serving your term of imprisonment in
3 accordance with Section 753.2 of the *Criminal Code*
4 and with the *Corrections and Conditional Release*
5 *Act*.

6 I make the usual firearms prohibition order
7 under Section 109 of the *Criminal Code*. Any such
8 item in your possession at this time shall be
9 surrendered to a police officer forthwith.

10 The DNA order requested by the Crown will
11 issue.

12 There will be no Victim Fine surcharge in the
13 circumstances.

14 And pursuant to Section 760 of the *Criminal*
15 *Code*, I order that a transcript of the hearing and
16 the trial and copies of all exhibits be forwarded to
17 the Correctional Service of Canada for its
18 information.

19 You may sit down.

20 THE CLERK: The firearms prohibition is ten
21 years, Your Honour?

22 THE COURT: Yes.

23 I want to thank counsel for their assistance in
24 this case.

25 MS. SCHMALTZ: Sir, just to correct the
26 record actually, I had said this morning that the
27 DNA order was mandatory.

1 Being that the offence was committed before the
2 legislation came into effect, it is not a mandatory
3 order. The Crown is still requesting it though.

4 THE COURT: It is a different section of the
5 Code.

6 MS. SCHMALTZ: Yes.

7 THE COURT: Is there any submissions on that
8 point?

9 MR. BOYD: No, sir, I am aware of the
10 privacy and other issues that can be raised. I
11 don't think on the fact base here that it would be a
12 point to raising those.

13 THE COURT: No, I am satisfied that there is
14 merit in the DNA sample order going. It is just that
15 it is, you're right, a different section of the
16 Code.

17 MS. SCHMALTZ: I did have a draft order
18 prepared, unfortunately I neglected to bring it with
19 me. I will forward it to Mr. Boyd for his approval
20 and then send it to the Court.

21 THE COURT: Fine, thank you. We will close
22 court.

23 **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

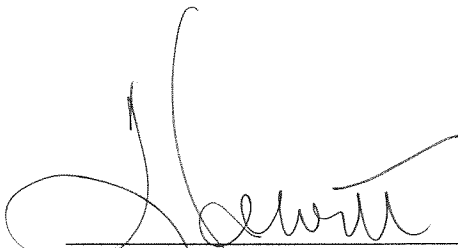
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Certified pursuant to Rule 723
of the Supreme Court Rules.



Lois Hewitt,
Court Reporter

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