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R. v. Whane, 2001 NWTSC 7

CR03869

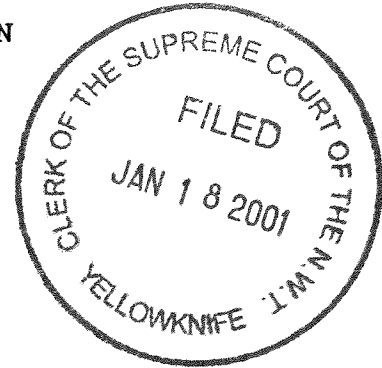
IN THE SUPREME COURT
OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

GEORGE WHANE



Sentencing by The Honourable Justice J.E.
Richard, at Rae, Northwest Territories, on the
12th day of December A.D. 2000.

APPEARANCES:

A. Slatkoff, Esq.	Appeared for the Crown
T. Boyd, Esq.	Appeared for the Defence
D. Gerbrandt, Ms.	Court Reporter

(Charged under Section 142 of the Criminal Code
of Canada)

1 THE COURT: George Whane has been
2 convicted by a jury of 12 residents of this
3 community for the crime of incest committed by
4 him 35 years ago, when he was about 16 to 18
5 years of age and his sister was 9 to 11 years of
6 age.

7 The victim tried to complain to her mother
8 those many years ago, but her mother would not
9 believe her so the victim, now 45 years of age,
10 kept this to herself for a long, long time.
11 Initially she said nothing about it because she
12 was scared of her brother, as her brother had
13 threatened to hurt her if she told anyone.

14 She said at trial that the sexual abuse at
15 the hands of her brother stopped when she was
16 about 11 years of age, when she started to fight
17 back and to resist the abuse.

18 In later years she kept the knowledge of the
19 abuse within herself and could not tell anyone.
20 She said at one point she contemplated suicide
21 because of it. Throughout most of her adult life
22 to date she has suffered from alcohol abuse, and
23 she says it is partly because she was trying to
24 hide from the knowledge of her abuse at the hands
25 of her brother. Eventually the victim could not
26 hold or keep the knowledge within herself and she
27 began to share this knowledge of her childhood

1 abuse with other people: with her sister-in-law,
2 with her new spouse, and with the community
3 priest. In June of 1999 she made a formal
4 complaint to the RCMP.

5 The victim is now leading a constructive
6 life and is contributing to her home community as
7 an educational assistant at the elementary school
8 and also participates in church activities.
9 Although the victim testified at the trial, she
10 declines to provide a formal Victim Impact
11 Statement for purposes of this sentencing
12 hearing.

13 In her testimony at trial the victim
14 indicated that one of the particular reasons why
15 she finally came forward to the police was
16 because of her work with the young children of
17 this community and her desire that there be an
18 end to the sexual abuse which has occurred here
19 in this community in the past.

20 It is the Court's hope that Rosa Whane will
21 now be able to put this horrible personal memory
22 and experience and pain behind her now that she
23 has testified about it publicly before her own
24 community. Rosa Whane is to be commended for the
25 courage and the strength that she has shown in
26 doing so, for it was surely not an easy thing for
27 her to do.

1 It is now my serious responsibility to
2 impose a fit and proper sentence upon George
3 Whane for his crime that he committed 35 years
4 ago. This task of sentencing is also not an easy
5 task. The parliament of Canada has in the
6 Criminal Code set out the fundamental purpose and
7 the principles of sentencing and the factors that
8 have to be considered by a sentencing judge. In
9 particular parliament has directed that the Court
10 consider the appropriateness or reasonableness of
11 all other possible sanctions or penalties other
12 than imprisonment, especially for Aboriginal
13 offenders.

14 George Whane before the Court today is such
15 an Aboriginal offender. He was born and raised
16 here in the Dogrib community of Rae and I'm told
17 that his father died when he was in his teens and
18 his mother, who still lives here in the family
19 home, was assisted by him, Mr. Whane, in raising
20 he and his siblings. I am told that after his
21 father's death he himself assumed the role as the
22 eldest child as the male head of the family. He
23 attended residential school in Fort Smith for a
24 time, and I'm told that he now has achieved a
25 grade 8 equivalency education through upgrading
26 courses.

27 George Whane has throughout his adult life

1 worked at a variety of jobs in the wage economy;
2 for example as a labourer and as a summer fire
3 fighter with the department of forestry. In his
4 earlier years he lived the traditional life of
5 the Dogrib, spending much of his time in the bush
6 hunting and trapping as traditional pursuits. To
7 this day I am told he maintains a camp in the
8 bush some 30 kilometres from Rae towards
9 Yellowknife, where he spends part of his time
10 when he is not in the community of Rae or the
11 city of Yellowknife.

12 The evidence before the Court indicates that
13 he has suffered for many years from alcohol abuse
14 and that illness in turn is no doubt to a large
15 extent responsible for his record of criminal
16 convictions. His criminal record is as follows:
17 1971 in Fort Providence impaired driving, a \$100
18 fine; 1978 at Yellowknife he failed to provide a
19 breath sample, two weeks imprisonment; 1978 he
20 failed to attend court, a \$50 fine; 1978 at Rae,
21 driving while over 80 milligrams percent alcohol,
22 three months imprisonment; 1986 at Rae, driving
23 while over 80 milligrams percent alcohol, a \$500
24 fine, a driving suspension; 1996, assault causing
25 bodily harm and using a firearm in commission of
26 offence, sentence of two years less a day plus a
27 firearms prohibition order for ten years.

1 I acknowledge, however, that all of this
2 criminal behaviour occurred subsequent to the
3 commission of the crime for which he is being
4 sentenced today.

5 The offender before the Court is a single
6 man with no dependents. He has in the past,
7 however, provided country food to his extended
8 family from time to time through his hunting and
9 trapping activities. He has no present wage
10 employment that the Court has been advised of.

11 I look now to the aggravating and mitigating
12 circumstances or factors that could affect the
13 sentence in this case. It is an aggravating
14 circumstance that this is a crime in which he
15 abused or took advantage of the position of trust
16 or the relationship of dependency that exists
17 between an older brother in a large family and a
18 younger sibling, especially in a family where
19 there was no longer a father present.

20 It is also an aggravating circumstance here
21 that the offender's crime consists not merely of
22 one act of unlawful intercourse with his young
23 sister but rather the continued pattern of
24 incestuous behaviour and sexual abuse over a
25 period of three years. Although the jury's
26 verdict does not necessarily say so, I find as a
27 fact that the evidence establishes that pattern.

1 I find no particular mitigating factors
2 present that work in the offender's favour to
3 reduce the sentence that would otherwise be
4 imposed. Although Mr. Whane had not, prior to
5 committing the crime of incest, committed other
6 criminal offences, it can hardly be said that he
7 has led an exemplary life prior to his day of
8 reckoning for this crime today.

9 Also, I do not sense any remorse on the part
10 of this offender for what he did to his own
11 sister many years ago and for the ongoing
12 emotional trauma and harm that he has directly
13 caused her, that he is directly responsible for
14 over these many, many years.

15 From my observations of Rosa Whane at trial,
16 my impression is that all she really wanted was
17 for him to acknowledge his wrongdoing, to
18 acknowledge to her and to the community that he
19 is responsible for the harm that he has caused.
20 He is apparently unwilling or unable to do that.

21 One of the objectives of the sentence that I
22 am about to impose is hopefully to develop in
23 George Whane, while he is serving his sentence, a
24 sense of responsibility for what he has done.
25 One can only hope.

26 Mr. Whane has committed a very serious crime
27 and the sentence must reflect that. The most

1 significant objectives of any sentence imposed on
2 George Whane today are, firstly, denunciation of
3 this unlawful conduct; secondly, general
4 deterrence to other persons from committing such
5 crimes; and thirdly, as I have said, the need to
6 promote a sense of responsibility in George Whane
7 and other offenders and to acknowledge the harm
8 done to the victim here and to the social fabric
9 of this community.

10 Please stand, Mr. Whane. Mr. Whane, for the
11 crime that you have committed, the crime of
12 incest, it is the sentence of this Court that you
13 be imprisoned for a period of three years. In
14 addition, as I'm required by law to do so, there
15 will be a firearms prohibition order under
16 section 109 of the Criminal Code, but I will
17 qualify that by directing under section 113 of
18 the Criminal Code that a firearms officer is
19 authorized to issue you an authorization for
20 sustenance purposes. In the circumstances of
21 this sentence there will be no victim fine
22 surcharge.

23 You may sit down, sir.

24 THE CLERK: Your Honour, the firearms
25 prohibition --

26 THE COURT: Ten years.

27 THE CLERK: Thank you.

1 THE COURT: Counsel, is there anything
2 further with respect to this case?

3 MR. SLATKOFF: Sir, the Crown is seeking a
4 DNA sample from the accused pursuant to section
5 487.052 of the Criminal Code. The offence
6 obviously occurred before the DNA Identification
7 Act came into force, so it is incumbent upon the
8 Crown to ask for that order.

9 I am not aware if my friend has any
10 objections. He is aware that Crown is seeking
11 this.

12 THE COURT: What's the section reference
13 again?

14 MR. SLATKOFF: 487.052. The Crown must make
15 an application. And the factors to be considered
16 are the nature of the offence and the
17 circumstances surrounding its commission, as well
18 as the impact such an order would have on the
19 person's privacy and security of the person. The
20 Court shall give reasons for its decision.

21 If you like, sir, I can point out that this
22 is a designated offence. The offences are all
23 listed under section 487.04, and this is one of
24 them.

25 THE COURT: Any submissions, Mr. Boyd?

26 MR. BOYD: No, sir. The Defence is not
27 able to raise any of the privacy or other

1 concerns listed in the section.

2 THE COURT: Fine. The order will be
3 issued under section 487.052.

4 MR. SLATKOFF: I have drafted up the order
5 for your signature, sir.

6 THE COURT: Fine. You can give it to the
7 clerk afterwards.

8 Anything further, counsel?

9 MR. BOYD: Not from Defence, Your
10 Honour.

11 MR. SLATKOFF: No, sir.

12 THE COURT: Fine. We'll close court.

13 (SENTENCING CONCLUDED)

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15 I, Donna Gerbrandt, Court Reporter, hereby
16 certify that I attended the above-mentioned
17 proceedings and took faithful and accurate
18 shorthand notes and the foregoing is a true and
19 accurate transcript of my shorthand notes to the
20 best of my skill and ability.

21 Dated at the City of Calgary, Province of
22 Alberta this 9th day of January A.D. 2001.

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Donna Gerbrandt, C.S.R.(A)

27

Court Reporter