

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RICHARD CLINT TONKA

Transcript of the Oral Reasons for Sentence of The
Honourable Justice V.A. Schuler, sitting in Yellowknife, in
the Northwest Territories, on the 25th day of April, A.D.
2002.

APPEARANCES:

Mr. N. Sinclair:

Counsel for the Crown

Ms. M. Engley:

Counsel for the Defence

1 THE COURT: All right, thank you.

2 Well, Mr. Richard Tonka is a 27-year-old man
3 whom I convicted last week of several offences, the
4 most serious of which was sexual assault.

5 Very briefly, for purposes of the sentencing
6 record, the situation was that Mr. Tonka and his
7 cousin, the complainant, were driving around Fort
8 Simpson drinking and smoking marijuana which he had
9 supplied.

10 According to the complainant's evidence, which I
11 accepted, Mr. Tonka started to act very strangely and
12 they had an argument after which he calmed down, and
13 then after some more driving around, he just attacked
14 her in the car and, against her protests, had sexual
15 intercourse with her.

16 He had locked the car doors and had made efforts
17 to subdue her; in other words, to stop her from
18 struggling, and in the course of some of her crying
19 and protesting, threatened to hit her on the head
20 with a rock. So those are the basic facts on the
21 sexual assault, the unlawful confinement, and the
22 threatening to cause bodily harm charges.

23 The next day Mr. Tonka gave the complainant
24 three marijuana joints when he saw her on the street
25 and asked her if she would forgive him, and that then
26 gave rise to the trafficking charge.

27 Some time after that he told her mother to tell

1 her that he would give her money if she would drop
2 the charge. He later told the complainant that he
3 would give her \$1000 and he left \$100 and some
4 marijuana on a table for her again in an attempt to
5 get her to drop the charge, and then still later he
6 asked her whether she had thought about dropping the
7 charges in exchange for \$1000. So all of that led to
8 the obstruction of justice charge.

9 His contacts with the complainant are the basis
10 for the breach of recognizance charge because, under
11 his recognizance, he was to have no contact with her.

12 And finally, Mr. Tonka was on probation and had
13 been put on probation approximately three months
14 before this series of events occurred, and was on
15 probation at the time of the offence.

16 Now, dealing first of all with the sexual
17 assault. Obviously any sexual assault is a serious
18 matter. In this case, the fact that the complainant,
19 the victim of the sexual assault is Mr. Tonka's
20 cousin, makes it more serious. There is an element
21 of breach of trust, although I have to say not as
22 strong as, for example, would be present in a
23 parent/child or a husband/wife relationship, but
24 certainly this was a young girl, his cousin who
25 obviously, according to her testimony, seemed to look
26 up to him to feel that he was someone she could talk
27 to, and he then treated her with very callous

1 disregard, total disregard for her personal integrity
2 in committing these offences on her.

3 As to whether he deliberately shut the car door
4 on her foot, whether he deliberately caused harm to
5 her in doing that, I don't think on the facts I can
6 go that far. Certainly he deliberately shut the door
7 to stop her from leaving, to stop her from getting
8 out of the vehicle, and I would say that he obviously
9 didn't care whether her foot was in the way or not.

10 The effect on the victim of these events is set
11 out quite clearly in her victim impact statement. It
12 has been referred to by counsel. For the most part,
13 obviously, there has been an emotional effect. She
14 talks about the difficulty that it has caused for her
15 in terms of being able to trust other people, the
16 anger and the bitterness that she feels. But she
17 also talks, and this is important too about the fact
18 and I believe this was also said in her evidence at
19 the trial, that after the sexual assault she started
20 to drink more and use drugs more in order to try to
21 forget what happened. And she also says in her
22 statement that she found it impossible to concentrate
23 at school and so she quit. So the effects on her
24 have been quite serious and, unfortunately, these are
25 the kinds of effects that we often see on victims of
26 sexual assault. The only thing, of course, that the
27 Court can do is just hope that she does get help to

1 deal with these matters and that perhaps at some
2 point in the future she can overcome all of this and
3 move on with her life.

4 There are -- I would have to agree with Crown
5 counsel, there really are no mitigating factors in
6 this case. Mr. Tonka, of course, had the right to
7 plead not guilty and I don't take that in aggravation
8 in any way. It simply means that he doesn't have the
9 mitigation that a guilty plea usually brings.

10 As far as his consumption of alcohol and drugs
11 on the date of the sexual assault, that clearly is
12 not an excuse. It may lend some weight to the
13 submission that this wasn't premeditated, and I
14 accept that there is no evidence that it was
15 premeditated, but in my view, the evidence raises a
16 very real concern about Mr. Tonka in the sense that
17 the way that the victim described him, his actions
18 and his sudden apparent strange behavior and becoming
19 very angry and argumentative is a reason for concern,
20 and I say that simply in the hopes that Mr. Tonka
21 will try to get some help for that. Whether it was
22 the alcohol or the marijuana or whether it was
23 something else, certainly the description she gave of
24 his behavior is somewhat unusual.

25 In terms of Mr. Tonka's future, I would say now,
26 Mr. Tonka, you know what you're capable of doing when
27 you are under the influence, that you better do some

1 pretty serious thinking because obviously you can't
2 control your actions or at least on this occasion you
3 weren't able to control them at all if, in fact, it's
4 the case that you were affected by what you had had
5 to drink and what you had smoked.

6 Now, you have to take responsibility for what
7 you did, and I'm not suggesting in any way that you
8 can blame it on the alcohol or the drugs but, as I
9 say, your cousin's description of how you were acting
10 does strike me as indicating that there are some
11 problems there that you need to take care of.

12 I do take into account Mr. Tonka's apparently
13 difficult background. It's sometimes said that there
14 is a vicious circle that happens with sexual abuse so
15 that if you were sexually abused when you were a
16 child, it may be that that continues, but that's not
17 true in all cases and, again, that may be something,
18 Mr. Tonka, that you should look at getting some help
19 for.

20 But it does -- it always strikes me as, I
21 suppose, difficult to understand in these cases that
22 someone who is sexually abused would then turn around
23 and do a similar thing to another person knowing the
24 terrible feelings that would result to them and the
25 terrible harm that would result to them from that.

26 I take into account Mr. Tonka's criminal record.
27 From the sentences that were imposed, it appears that

1 the offences may have been relatively minor in
2 nature, but the record, itself, is not a one, it
3 starts in 1991 in youth court and it continues from
4 then right up to date. So it is a continuing record
5 with not very many breaks in-between.

6 Of most concern in relation to this case, of
7 course, are the previous two assaults which are
8 obviously related to the type of behavior that he
9 showed on this occasion and also the breaches of
10 probation and failure to comply with recognizance and
11 then the more recent breaches of undertaking which do
12 indicate an inability or unwillingness to comply with
13 court orders.

14 Now obviously he has not served any lengthy
15 period of incarceration in the past, but equally
16 obviously the offences for which he is now convicted
17 are far more serious and do call for far greater
18 periods of incarceration than what has been imposed
19 in the past.

20 In terms of the pretrial custody in this case, I
21 take into account that he was sentenced in December
22 2001 to 60 days for breaches of undertakings, but I
23 would differentiate the situation from the case where
24 someone is remanded in custody solely because of the
25 offence with which they have been charged. In this
26 case, obviously, the reason that Mr. Tonka is in
27 custody is because he breached the release he was on.

1 So I will take into account that there was some
2 further pretrial custody after he would have served
3 his sentence on the breaches, but I don't give it
4 anything more than simply its face value.

5 I take into account, as has been submitted by
6 defence counsel, that Mr. Tonka is an aboriginal man.
7 There has been nothing specific in terms of
8 institutional or other factors put before me that
9 might relate to his current situation or the offences
10 before the Court and obviously these are the types of
11 offences that do, in my view, require a term of
12 incarceration and it hasn't been suggested that
13 anything other than that would be appropriate.

14 I also take into account the totality of the
15 sentences that I am about to impose in that there are
16 a number of offences, but the final sentence must
17 still be appropriate and must not be overly long.
18 And I also want to strive to keep the sentences in
19 line with sentences for similar offences in this
20 jurisdiction.

21 Stand up please, Mr. Tonka. Mr. Tonka, on the
22 charges of sexual assault, unlawful confinement and
23 uttering a threat, which are Counts 2, 3, and 4 in
24 the indictment, I sentence you to serve a total of
25 three and a half years imprisonment.

26 On Count 5 in the indictment, the obstructing
27 justice offence, I sentence you to one year

1 consecutive.

2 On Count 6, which is the offence of breaching
3 your recognizance, since the circumstances of that
4 are really the same as Count 5, the obstruction of
5 justice, I'm going to impose a sentence of one year
6 concurrent.

7 And on Count 7, the breach of probation, I
8 impose a sentence of six months consecutive.

9 On Count 1, the trafficking charge, I agree
10 that, in itself, it's at the lower end. To my mind
11 what makes it more aggravating than the usual
12 trafficking one might see in terms of giving three
13 joints to a friend is the fact that, in effect, you
14 were saying to this young girl that, Here is a bag of
15 marijuana, here are three joints and hopefully that
16 will make up for having sexually assaulted her which
17 is really a callous and very cold-hearted thing to
18 do. In any event, on that particular charge and
19 again keeping in mind totality, I'm simply going to
20 make it time served but, for the record, one day
21 concurrent will be imposed. So that is a total of
22 five years imprisonment, Mr. Tonka.

23 Now that's a long time and I am going to
24 recommend, I am going to have the warrant endorsed
25 with my recommendation that you -- that because of
26 the circumstances of the sexual assault offence, that
27 you be given access to anger management and also drug

1 and alcohol counselling if the prison authorities
2 deem that appropriate in your circumstances.

3 There will also be a firearm prohibition order
4 in the usual terms for a period which starts today
5 and will end ten years from the date of your release
6 from imprisonment.

7 Does your client have any items? Does he need
8 time to surrender any items?

9 MS. ENGLELY: No he doesn't, thank you, Your Honour.

10 THE COURT: All right, the order will just be that
11 any such items are to be surrendered to the RCMP
12 forthwith, and in light of the jail sentence I am not
13 going to -- I'm going to waive the victim of crime
14 surcharge so that will be waived. You can have a
15 seat, Mr. Tonka. Is there anything further, counsel,
16 that I need to deal with?

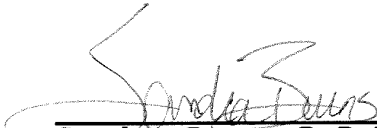
17 MR. SINCLAIR: No, Your Honour, thank you.

18 MS. ENGLELY: No, thank you.

19 THE COURT: Thank you, counsel, for your
20 presentation of the case and we will close court.

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22 **Certified pursuant to Practice Direction #20**
23 **dated December 28, 1987.**

24 
25 **Sandra Burns R.P.R., C.R.R.**
26 **Court Reporter**

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