R. v. *Daniels*, 2002 NWTSC 50

Date: 2002 07 31
Docket: S-1-CR 2002 000016

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

SHERRY LEE DANIELS

Respondent

Sentence appeal on conviction of assault causing bodily harm contrary to s.267(b) C.C.. Dismissed.

Heard at Yellowknife, NT May 23, 2002

Reasons filed: July 31, 2002

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Appellant: Andrew Fox
Counsel for the Respondent: William Rouse

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REASONS FOR JUDGMENT

[1] The respondent in this sentence appeal is a 41-year-old woman convicted of assault causing bodily harm contrary to s.267(b) C.C. The victim of the assault was her husband. He suffered a single stab wound to his face, penetrating through his left cheek. There was extensive bleeding from the wound before the victim received medical attention. A nurse closed the wound with five sutures.

[2] The respondent's conviction was based on circumstantial evidence. There was no eye witness to the assault. The victim was intoxicated at the time of sustaining the injury and testified under oath that he does not know how he came to have the injury to his face. The respondent herself was intoxicated at the time that the victim received his injury and testified under oath that she has no recollection of an extended period of time prior to waking up in the cells at the police detachment.

[3] The Crown's theory was that the respondent stabbed the victim during the course of a lengthy drinking session at their home. A third person who was present through the drinking session, David Cook, testified that everybody was in good spirits and there were no fights or animosity up until the time he went to sleep. He stated that a few hours later he awoke and when he went to the kitchen for a glass of water he noticed blood on the floor and elsewhere in the kitchen. He saw the respondent sitting

on a couch in the living room and she was crying. No one else was in the home. Mr. Cook asked the respondent what had happened and she responded, "I might have stabbed him".

[4] That evidence was the basis on which the trial judge convicted the respondent. There was simply no evidence of the manner in which the injury was inflicted, or the physical act or acts of the respondent in committing the assault, or the circumstances leading up to the assault. No weapon was seized or entered into evidence.

[5] At the conclusion of the sentencing hearing the trial judge imposed a $1,000 fine. In doing so, he made no mention of the circumstances of the offence — he could hardly do so given the absence of any evidence of those circumstances.

[6] At the sentencing hearing the trial judge was advised of the respondent's previous criminal record, as follows:

1989	common assault	$ 375.00 fine
1991	mischief	$ 230.00 fine
1991	mischief	Probation for 1 year
1992	mischief	$ 250.00 fine
1992	Breach of probation	$ 150.00 fine
1995	common assault (2 counts)	1 day in jail, plus probation for 1 year

[7] There was also evidence before the trial judge at the sentencing hearing that in the month following the assault on her husband she took a 16-day treatment program in Yellowknife to deal with her alcohol abuse problem. There were also letters of support from members of the community of Norman Wells attesting to her involvement as a caring and contributing member of the community.

[8] The Crown appeals the sentence imposed upon the respondent, submitting that it is "demonstrably unfit in all of the circumstances".

[9] The Supreme Court of Canada has held that an appeal court ought not to intervene to vary a sentence imposed by a trial judge in the absence of a) an error in principle, b) a failure to consider a relevant factor, or c) an overemphasis of any appropriate factor. The decision of a sentencing judge is entitled to deference unless it is clearly unreasonable.

[10] The trial judge in the present case quite properly noted that the respondent's prior assault convictions were dated. He also noted that she had commenced the rehabilitative process in attending the treatment program at the Salvation Army in Yellowknife, and that her relationship with her spouse was continuing and has not been affected by the assault.

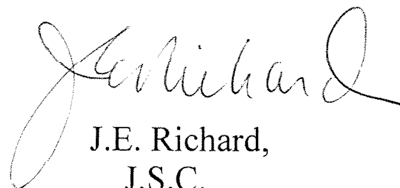
[11] On this appeal the Crown submits that the trial judge gave insufficient weight to the respondent's previous convictions for assaultive behaviour. I disagree. There was no evidence of the nature of those assaults, committed 12 years and 7 years earlier. The sentences imposed for those dated assaults would indicate they were relatively minor assaults.

[12] The Crown also submits, citing s.718.2 C.C., that the spousal relationship between the offender and victim is an aggravating factor to which the trial judge gave insufficient weight. With respect, this submission flows from an incomplete reading of s.718.2 C.C. The section states that "evidence that the offender, in committing the offence, abused the offender's spouse" shall be deemed to be an aggravating circumstance. According to the trial record, there was no such evidence for the trial judge to consider. The circumstantial evidence underlying the conviction did not indicate what role, if any, the spousal relationship played in the offence.

[13] Nor was there evidence to assist the trial judge in assessing the gravity of the offence (apart from its result) nor the degree of responsibility of the respondent. Was the assault a vicious, unprovoked attack, or was it closer on the spectrum to an accident, or was it an act of self-defence that was disproportionate? The trial judge in this case was unable to place this offence at any particular point on the spectrum of gravity or within the range of degree of responsibility of the offender.

[14] I agree with Crown counsel that domestic violence is a serious social problem in this jurisdiction. I also agree that at first blush, a $1,000 fine for a stabbing assault on one's spouse appears lenient. However, a close examination of the trial record indicates that the sentencing judge had virtually no information about the circumstances of the offence. In this situation it cannot be said that the sentencing judge made any error in principle, failed to consider any relevant factor, or overemphasized the rehabilitation of the respondent.

[15] On this appeal the onus is on the Crown to satisfy the Court that the sentence imposed is demonstrably unfit. In my view the Crown has not discharged that onus. For these reasons the appeal is dismissed.



J.E. Richard,
J.S.C.

Dated at Yellowknife,NT, this
31st day of July 2002

Counsel for the Appellant: Andrew Fox
Counsel for the Respondent: William Rouse