

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

LEONARD FISH



Transcript of the Reasons for Sentence delivered by The Honourable Justice J.E. Richard, sitting in Yellowknife, in the Northwest Territories, on the 25th day of July, A.D. 2002.

APPEARANCES:

Ms. C. Carrasco:

Counsel for the Crown

Mr. S. Duke:

Counsel for the Defendant

(Charge under s. 271 of the Criminal Code of Canada)

1 THE COURT: A jury comprised of the members
2 of our community has quite properly found the
3 offender, Leonard Fish, guilty of the serious crime of
4 sexual assault.

5 The jury heard the victim's evidence where she
6 stated that she had been drinking in the bars for
7 several hours with her friend, Sheila Bonnetrouge, and
8 Sheila's common-law acquaintance, Leonard Fish. They
9 returned to Sheila's apartment after bar closing hours
10 and went to bed. The victim, being a guest there, was
11 allowed to sleep in the children's room. She went to
12 sleep there, fully clothed, on one of the children's
13 beds. The offender; his girlfriend, Sheila
14 Bonnetrouge; and Sheila's six-year-old son slept on a
15 bed in Sheila's bedroom. The victim woke up in
16 Sheila's bed with Sheila, the offender, and Sheila's
17 young son. The victim does not know or remember how
18 she came to be in a different bedroom.

19 Another adult person present in the apartment,
20 however, did observe, in the middle of the night, the
21 offender, Leonard Fish, go into the room where the
22 victim was sleeping and wake her up and tell her to
23 come into Sheila's bedroom to sleep, and when the
24 victim resisted, he pulled her out of that bedroom
25 into Sheila's bedroom.

26 The victim awoke when she felt something inside
27 her vagina and felt someone on top of her and then

1 felt someone getting off of her. When she awoke, she
2 noticed her zipper was down, her pants were open, and
3 she started screaming. The only people present in the
4 room were the victim; Sheila; Sheila's six-year-old
5 son; and the offender, Leonard Fish.

6 The offender denied doing anything to the victim.

7 The police were called, and the victim was taken
8 to the hospital where a sexual assault kit was done.
9 Subsequent analysis of samples of fluids taken from
10 her vagina indicated the presence of semen. A DNA
11 profile of that semen matched the DNA profile obtained
12 from a blood sample taken from the offender, Leonard
13 Fish.

14 The offender testified at his trial and told the
15 jury a preposterous story of why he woke the victim
16 and told her to come into the other bed with he and
17 Sheila.

18 It is now my serious responsibility to impose an
19 appropriate sentence according to law.

20 The 25-year old victim, although advised of her
21 right to provide the Court with a Victim Impact
22 Statement, has declined to do so.

23 The offender before the Court is 36 years of age,
24 a Dogrib man who has lived in his home community of
25 Rae, in Yellowknife, and more recently in Snare Lake.
26 I am told that he has never been outside the Northwest
27 Territories. He has no spouse or other dependents.

He has worked in recent months as a janitor at a mining camp.

Mr. Fish has an extensive criminal record consisting of, by my count, 18 convictions over the past 20 years. These convictions include six assaults or crimes of violence. He was sentenced as long ago as 1985 to six months in jail for assaultive behaviour and as recently as the year 2000 to four months in jail for assaultive behaviour.

In the Court's experience, most young men with a string of criminal convictions and who have been in and out of jail as young adults, most of them become wise or mature by the age of 29 or 30 and decide that they don't want that life any more. So they decide to stop committing crimes and going to jail, and, instead, decide to live a peaceful life with other members of society. It appears that this 36-year-old offender, Leonard Fish, is one of the exceptions to that general observation.

In determining an appropriate sentence in each case, the Court is required by law to have regard to certain principles of sentencing or objectives of the sentencing process in order to achieve its overall purposes, which are simply to promote respect for the law and to protect the members of the community.

I find that in this case the most important principles are deterrence, denunciation,

proportionality, and parity in sentencing.

I know that Leonard Fish is an aboriginal person, as are many of the offenders who appear before this Court. Yet there is nothing in his own background or personal circumstances that has been drawn to my attention that leads me to consider any reasonable sanction other than a term of imprisonment for the serious crime he has committed. I am, however, mindful of his background, living all of his life in or near a traditional aboriginal community, when considering his request as to where he might be incarcerated.

The proportionality principle requires the Court to consider the gravity or seriousness of the crime and the extent of the moral blameworthiness of the offender in committing the crime. Here, the crime was a serious sexual assault, a violation of the personal and bodily integrity of an acquaintance, a guest in his girlfriend's apartment, who was vulnerable and unconscious.

Mr. Fish's moral blameworthiness is at a high level. He took advantage of a vulnerable, unconscious woman, and in doing so displayed a callous disregard for her as a human being.

There are no mitigating factors or circumstances here that work in Mr. Fish's favour in the determination of sentence.

When the Court considers the principle of parity in sentencing, it is a reminder to this Court of the sad, tragic fact that this very crime is prevalent in this jurisdiction and has been for years. There are many, many sentences that have been imposed in this jurisdiction on similar offenders for similar offences committed in similar circumstances. The range is three to four years or more of penitentiary time. For that reason, I am unable to grant the request of this offender, communicated through his counsel, for a conditional sentence to be served in the community. One of the prerequisites for a conditional sentence is that the imprisonment be for a period of less than two years. Given the circumstances of this offender and this offence, a sentence of less than two years imprisonment is not on.

Please stand now, Mr. Fish.

Leonard Fish, for the crime that you have committed, the sexual assault of Michelle Betsidea, contrary to Section 271 of the *Criminal Code*, I impose a sentence of three years' imprisonment. In addition, I grant the DNA order sought by the Crown as well as the mandatory ten-year firearms prohibition order under Section 109. There will be no victim fine surcharge. And I direct the Clerk of the Court to endorse the Warrant of Committal with this Court's recommendation that you be allowed to serve your term

of imprisonment at an institution within the Northwest Territories.

You may sit.

Anything further, Counsel, on this case?

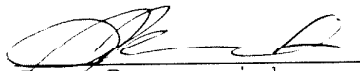
MS. CARRASCO: No, Sir.

MR. DUKE: No.

THE COURT: Thank you. We'll close court.

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Certified Pursuant to Rule 723
of the Rules of Court



Jane Romanowich,
Court Reporter