

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MARK ERNEST BRULE

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Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting in Fort Providence, in the Northwest Territories, on the 26th day of March, A.D. 2002.

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APPEARANCES:

Ms. S. Bond:	Counsel for the Crown
Mr. S. Shabala:	Counsel for the Defendant

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

1 THE COURT: Mr. Brule, before I sentence you  
2 is there anything you wish to say? If so, please  
3 stand and you may say it.

4 THE ACCUSED: Yes. I want to say I accept the  
5 jury's decision, and, also, I'd like to apologize to  
6 my common-law, Norma Gargan, and to Grace Gargan for  
7 my actions, and that's all.

8 THE COURT: Thank you. I will proceed to  
9 give the sentence now.

10 Mr. Brule has been convicted by the jury of the  
11 offence of sexual assault. I am not going to go into  
12 a lot of detail, but it is clear to me that in  
13 convicting him, the jury must have accepted  
14 Miss Landry's evidence, must have accepted that what  
15 happened was that Mr. Brule took advantage of her, his  
16 sister-in-law, when she was asleep in the armchair in  
17 his house and had sexual intercourse with her while  
18 she was asleep or passed out, and that it was only on  
19 waking up that she realized what was happening and was  
20 able to push him away and go to her sister's room  
21 where she asked that the police be called.

22 The offence of sexual assault is a very serious  
23 one, and, unfortunately, it is an offence that is all  
24 too common in the Northwest Territories and, I am  
25 sure, elsewhere as well.

26 As I said to the jury, a sexual assault is an  
27 assault that violates the sexual privacy and integrity

1 of the victim, and that is exactly what Mr. Brule has  
2 done in this case.

3 In my view, although I am not sure that it can be  
4 characterized in the traditional sense as a breach of  
5 trust, the circumstances are certainly aggravated by  
6 the fact that this was Mr. Brule's sister-in-law and  
7 that he did this in his home where she was staying and  
8 where her sister was sleeping only -- I take it from  
9 the evidence, probably a few feet away in the bedroom.  
10 In other words, this was a situation where Miss Landry  
11 should have felt that she was safe and that she could  
12 expect to go to sleep without having anyone bother  
13 her, and, instead, her own brother-in-law committed a  
14 sexual assault on her while she was in that condition.

15 The principles of sentencing have been said, have  
16 been repeated, many, many times by this Court and by  
17 other courts that for the offence of sexual assault,  
18 the principles of denunciation - in other words,  
19 showing how the community rejects this kind of  
20 behaviour, how the community looks down on this kind  
21 of behaviour - and, also, deterrence - in other words,  
22 that the sentence send a signal to other men who would  
23 do this kind of thing, that it attempt to dissuade  
24 them from committing this type of offence. Those are  
25 the main principles the Court has to keep in mind.  
26 Now, those are not, obviously, to the exclusion of  
27 other things, and I have to consider all the

1           circumstances in this case.

2           Mr. Brule is a man who is 34 years old. He has  
3 spent all his life here in Fort Providence, and he has  
4 a common-law wife and three children, and it appears  
5 from what has been said that he has made attempts to  
6 educate himself, to become employed, and that he has  
7 been able to do that in the past.

8           I have to take into account that he does have a  
9 criminal record, and although there is only one  
10 offence on the record that is related to the sexual  
11 assault charge that I am dealing with now, and that is  
12 an assault for which Mr. Brule was convicted in 1997  
13 and for which he received a \$200 fine, apart from  
14 that, the record is of unrelated offences and there  
15 are no sexual offences on the record. One thing that  
16 is of concern is the fact that there are three  
17 previous convictions from 1998 and now three  
18 convictions in 2002 for failing to obey Court orders,  
19 and that obviously is something that is of concern.

20           There was no guilty plea in this case. Mr. Brule  
21 exercised his right to a trial, which, of course, he  
22 is entitled to do, and I don't treat that in any way  
23 as an aggravating factor or make anything of that.  
24 It is simply a neutral factor.

25           In my view, the fact that there apparently was a  
26 brief relationship between Mr. Brule and Miss Landry  
27 over a year ago is of no relevance. It seems to me

1 that had it been in some way relevant, then it would  
2 have been properly the subject of an application to  
3 put that evidence before the jury. But that not  
4 having been done, it has to be treated as irrelevant.  
5 It has nothing to do with what happened on the  
6 occasion in question. Seems to me that based on  
7 Miss Landry's evidence, it would have been obvious to  
8 Mr. Brule that she was asleep or she was passed out in  
9 the armchair and that she didn't know what was going  
10 on. So I don't think that in any way mitigates the  
11 offence or does anything that takes away from the  
12 seriousness of the offence.

13 It is unfortunate that with the record that  
14 Mr. Brule has and with his having indicated through  
15 counsel that it is alcohol-related, that Mr. Brule has  
16 not dealt with his alcohol problem earlier. I  
17 appreciate -- I understand there was the one attempt  
18 to get counselling. But, Mr. Brule, you can't blame  
19 your problems on alcohol. Alcohol is just a thing  
20 that is there. You are the one who takes the drink.  
21 You are the one who decides whether you are going to  
22 take a drink. That is something you can spend some  
23 time thinking about, and, I hope, something you will  
24 do something about for the future, for the sake of  
25 yourself and your family.

26 I do take into account that here today Mr. Brule  
27 has said that he accepts the jury's verdict. It is

1 not often that I hear that from a person who is  
2 convicted by a jury, and I do take that into account;  
3 and I take into account that he has indicated here  
4 today his wish to apologize to both Miss Landry and  
5 his common-law wife.

6 These cases are always very difficult. An event  
7 like this, which probably took a matter of very little  
8 time, now obviously is going to mean that Mr. Brule  
9 pays the consequences, which are serious consequences.

10 I will say for the record that I take -- or I  
11 suppose I am assuming to some extent, but having heard  
12 that he grew up here in Fort Providence, having seen  
13 Mr. Brule, I take it that he is an aboriginal person.  
14 I do take that into account as I must under the  
15 *Criminal Code*. There has not been anything put before  
16 me that would suggest that there are any particular  
17 factors relating to that that ought to impact on my  
18 sentence, but I do take into account that for someone  
19 from a small community like Fort Providence, the  
20 prospect of a lengthy period of incarceration may be  
21 more difficult or involve some further difficulties  
22 that might not exist in other cases. In any event, as  
23 I say, nothing in particular has been suggested to me  
24 as a result of that, so I go no farther with that.

25 I do have to, as well, keep in mind other  
26 sentences that have been imposed in this jurisdiction  
27 for this type of offence, and, in my view, the

1 sentence that I am going to impose is in keeping with  
2 those other sentences for similar offences, or  
3 offences of sexual assault in similar circumstances.

4 Please stand, Mr. Brule.

5 Mr. Brule, the sentence I impose on you is one of  
6 three years imprisonment.

7 In my view, under Section 110 of the *Criminal*  
8 *Code*, I am obliged to impose a firearm prohibition  
9 order because the offence of sexual assault is an  
10 offence of violence. So I do impose an order then. I  
11 am sorry, not Section 110. One hundred and nine. I  
12 do impose such an order prohibiting you from the  
13 possession of firearms, ammunition, and the other  
14 devices that are referred to in the section, for a  
15 period which will commence today and which will expire  
16 upon a date which is ten years after your release from  
17 imprisonment.

18 Does your client have any such items?

19 MR. SHABALA: I'm informed he has no firearms  
20 or ammunition.

21 THE COURT: Just for the record, the order  
22 will be that any such items be surrendered to the RCMP  
23 forthwith.

24 With respect to the DNA order that is requested,  
25 as this is a primary designated offence and nothing  
26 has been brought to my attention that would suggest  
27 that the order ought not to be made, considering the

1 terms of the order as presented to me and the offence  
2 of which Mr. Brule has been convicted, then the order  
3 as presented will issue.

4 You may sit down Mr. Brule.

5 The victim of crime surcharge will be waived in  
6 the circumstances.

7 Now, is there anything else that I need to deal  
8 with, Counsel?


9 MS. BOND: No, Your Honour.

10 MR. SHABALA: Nothing from the defence, Your  
11 Honour.

12 THE COURT: All right. I will leave the  
13 exhibit here for you, Madam Clerk. I wish to thank  
14 you, Counsel, for your presentation of the case. We  
15 will close court.

16 .....

18 Certified Pursuant to Rule 723  
19 of the Rules of Court

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21 \_\_\_\_\_  
22 Jane Romanowich, CSR(A), RPR  
23 Court Reporter

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