

ORIGINAL

R. v. Hagen, 2003 NWT SC 49

S-1-CR-2002000082

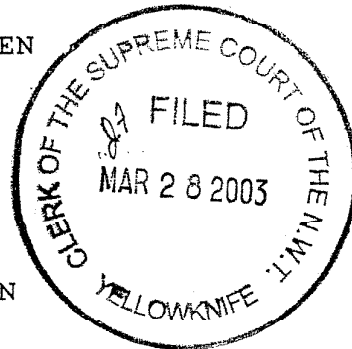
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CHESTER ARTHUR HAGEN



Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, in Yellowknife, in the Northwest Territories, on the 27th day of March, A.D. 2003.

APPEARANCES:

Ms. C. Carrasco:	Counsel for the Crown
Ms. M. Engley:	Counsel for the Defence

Charges under ss. 266 C.C. and 811 C.C.

1 THE COURT: It is difficult to know what to
2 do in a situation like this, in other words, to know
3 what might stop Mr. Hagen from assaulting Ms. Firth
4 and from obviously causing some sort of problems for
5 her when, as he had been on numerous occasions, he's
6 on a peace bond.

7 Her evidence at this trial as I understood it at
8 least on the occasion in question, was that as long as
9 he was not drinking she was content to have him around
10 but when he was drinking there was a problem. In fact
11 on the day in question she told him not to come back
12 if he had been drinking.

13 These two people have a lengthy history together.
14 I do not think I am off the mark at all in saying they
15 both obviously have a number of problems, the main one
16 perhaps of which is their abuse of alcohol.

17 The criminal record, which I think is the one
18 thing that stands out in terms of Mr. Hagen's
19 background, starts in 1962. It is not until 1983 that
20 there is a conviction that involves Ms. Firth. It is
21 not a conviction, it is actually a peace bond
22 application that was granted in which she and
23 Christopher Hagen, the son, were the complainants. So
24 certainly since 1983, 20 years, there has been a
25 continual pattern of there being peace bonds and
26 recognizances that were ordered where Ms. Firth has
27 been the complainant, or sometimes Ms. Firth and

1 Christopher Hagen, the son. Starting in 1986 there is
2 a continuing pattern of assaults on her: assault,
3 assault with a weapon, assault causing bodily harm,
4 unlawful confinement.

5 There was a hiatus, if I can call it that, when
6 Mr. Hagen was sentenced to four years for assault
7 causing bodily harm on her and nine months consecutive
8 to that for unlawful confinement of Ms. Firth. That
9 term of imprisonment would have expired, and then
10 there is nothing on the record until the breach of
11 undertaking conviction in 2002 and then obviously
12 these offences. When I say "nothing on the record", I
13 mean nothing involving Ms. Firth or Christopher Hagen.

14 The pattern of this record has to in my view mean
15 that paramount for my consideration has to be the
16 protection of Ms. Firth from this man and specific
17 deterrence, in other words, to deter him from
18 assaulting her.

19 Is it realistic to think that I can do that in
20 some way other than by simply removing him, by
21 incarcerating him? Well I do not think there is.
22 Nothing has been suggested certainly.

23 One thing that struck me in the evidence in the
24 interview that Ms. Firth had with Constable Varkonyi
25 was, and she said something along the lines of "Why
26 does he hate me so much?"

27 It is a terribly dysfunctional and a terribly sad

1 situation, but obviously beyond that it is a situation
2 that I have to do something to ensure that at least
3 for some time in the future that can be avoided so
4 that she has some sort of a break from this continuing
5 violence.

6 I do take into account the fact that there was
7 some evidence that Ms. Firth was throwing things at
8 Mr. Hagen, but this all started with an argument. He
9 was saying things to her that upset her and there was
10 arguing over his drinking. There is no indication
11 that he was harmed in any way by what she was throwing
12 at him. Her evidence was that he got angry at the
13 fact she was throwing things at him. So in my view it
14 is clear that he was acting in anger. He was not
15 acting in any way in self-defence. It was just anger
16 because of what was going on, her pestering him I
17 suppose about whether he was drinking. None of this
18 is an excuse for his behaviour. I am sure it has
19 happened thousands of times between these two people
20 and probably is how much of the violence on the record
21 happened; in other words, he is drinking, they are
22 arguing, and he becomes angry and takes it out on her,
23 uses her, as Ms. Carrasco said, as his punching bag.

24 There was some evidence that she does rely on him
25 in some ways. I suppose it is to his credit that he
26 seemed to in some ways care for her and want to help
27 her out. But it is just such a terribly destructive

1 and dysfunctional situation. Obviously he isn't
2 helping her out in the end when he treats her like
3 this.

4 I take into account that the assault in the range
5 of assaults that come before the court, is not the
6 most serious. It is not at the lower end of the scale
7 of common assaults either. She was left with some
8 quite notable injuries and she was obviously very
9 scared.

10 I take into account the remand time, but I also
11 note that Mr. Hagen at least after August 20th was
12 essentially in remand with respect to this charge
13 because he breached his undertaking. In those
14 circumstances, I am reluctant to credit the remand
15 time on a two-for-one basis as is often done, because
16 I think that when someone has breached an undertaking
17 and that is the reason they are in remand, it should
18 be treated differently than when they are detained
19 from day one and are simply unable to obtain release.

20 I have to bear in mind that the charge is common
21 assault and the sentence I impose notwithstanding that
22 the Crown has gone by indictment has to reflect that.
23 There was no evidence that the injuries caused
24 Ms. Firth lasting discomfort or that she was treated
25 in any way for them. But, having said that, they
26 still were, as I say, quite notable injuries. It is
27 not a matter of simply one bruise.

1 In the circumstances what I am going to do is
2 credit the remand time as the equivalent of six
3 months.

4 Stand up, please, Mr. Hagen.

5 With respect to Count 1 in the Indictment, the
6 assault on Georgina Firth, I sentence you to two years
7 in jail. On Count 2, failing to comply with a
8 condition of your recognizance, I sentence you to
9 three months consecutive.

10 You can have a seat. You may sit down.

11 In the circumstances, considering the continuing
12 violence and notwithstanding that no firearm was used
13 in the offence, and considering that there has been no
14 indication that Mr. Hagen requires the use of a
15 firearm, I am going to order under section 110 of the
16 *Criminal Code* that you be prohibited from possessing
17 any firearm, ammunition or explosives or any of the
18 other items referred to in section 110(1).

19 I just want to make sure I am reading this
20 correctly, counsel. Section 110 seems to indicate
21 that it is any time up until ten years that the order
22 can be made.

23 MS. CARRASCO: That's my understanding, so it
24 can be up to ten years.

25 THE COURT: In the circumstances, I do not
26 have see any reason to treat it differently than if it
27 had been a mandatory order, and in the circumstances I

1 think there is a real concern for Ms. Firth's safety.
2 So the order will commence today and it will expire
3 ten years from Mr. Hagen's release from imprisonment.

4 There will also be, again because of the pattern
5 of violence and in the absence of any submissions that
6 it would work any injustice to Mr. Hagen, there will
7 be a DNA order in the usual terms.

8 Do you have a draft order?

9 MS. CARRASCO: Yes, I do, and Ms. Engley has
10 reviewed it with me.

11 THE COURT: I take it there's no submissions?

12 MS. ENGLELEY: No, there's no submissions.

13 THE COURT: All right, I've signed the order
14 so that order will issue.

15 Is there anything else that I need to deal with?

16 The victim of crime surcharge will be waived in
17 the circumstances.

18 MS. CARRASCO: That's everything, Your Honour.

19 THE COURT: Anything from the defence?

20 MS. ENGLELEY: No, Your Honour.

21 THE COURT: Thank you, counsel, for your
22 conduct of the case and we'll adjourn court.

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724 of the Supreme Court Rules of Court

Annette Wright

Annette Wright, RPR, CSR(A)
Court Reporter