

R. v. Sunrise, 2002 NWTSC 45

S-1-CR2002/031

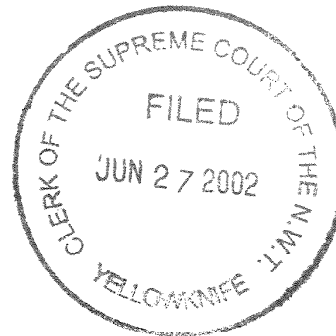
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

BARRY SUNRISE



Transcript of the Oral Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Hay River in the Northwest Territories, on June 10th A.D., 2002.

APPEARANCES:

Mr. D. Claxton: Counsel for the Crown
Mr. S. Shabala: Counsel for the Accused

Charge under s. 271 Criminal Code of Canada

1 THE COURT: Barry Sunrise has entered a plea
2 of guilty to a charge of sexual assault. The
3 circumstances are fairly straightforward.

4 On May 13th, 2001, the complainant was visiting
5 at the home of the accused's brother and his spouse.
6 The accused was not there. Early in the morning the
7 complainant fell asleep. Later in the morning,
8 however, the complainant awoke to find the accused
9 on top of her moving around. Both her and his pants
10 were down but intercourse is not alleged. The
11 complainant managed to throw the accused off and he
12 was thrown out of the house by the other occupants.
13 It is conceded that the accused was intoxicated at
14 the time.

15 Crown counsel has stated that the objectives of
16 deterrence and denunciation are paramount in this
17 case. Certainly any violation of a person's bodily
18 integrity through assaultive behaviour requires
19 serious sanctions.

20 In this particular case, Crown and defence
21 counsel have essentially joined in a submission that
22 an appropriate sentence would be in the range of 9
23 to 12 months. I think counsel are also agreed that
24 this would not be an appropriate case for
25 consideration of anything but a period of actual
26 incarceration considering the circumstances of the
27 offence and, in particular, the circumstances of

1 this offender.

2 I agree and, indeed, a period of incarceration,
3 in my opinion, is required to satisfy all of the
4 principles of sentencing.

5 The offender is 32 years of age. I am told
6 that he is single but he is the father of a child.

7 Significantly, he has a lengthy criminal
8 record. I counted 30 convictions between 1988 and
9 2001. At least six of those convictions were for
10 assault.

11 This offence, for which he is being sentenced
12 today, occurred on May 13th, 2001. His latest
13 conviction came on December 17th, 2001 when he was
14 sentenced for three offences related to breaches of
15 his release conditions. That sentence was for a
16 total of six and a half months. I am told that he
17 would have been released in late April and therefore
18 there is somewhat less than two months in pre-trial
19 custody. But the record shows, and the most recent
20 convictions also show, that the offender would not
21 be a suitable candidate for a non-incarceration
22 disposition.

23 In my opinion and it is obvious, as his counsel
24 has said, that the accused does have some serious
25 problems to deal with.

26 I am told that his convictions were primarily
27 related to his abuse of alcohol. It is certainly to

1 THE be hoped that the accused will take the opportunity,
2 both during the period of incarceration and help
3 afterwards, to try and come to grips with it and
4 also to enlarge and improve his education and
5 training skills. as requested by the Crown, and
6 inde Mr. Sunrise, you are 32 years old and it seems
7 to me that it is time that you started to take stock
8 of your life and started to try and determine what
9 you need to do to pull yourself up. DNA analysis.
10 and Stand up, sir. the order, Mr. Claxton

11 In my opinion, the recommended sentence from
12 Crown counsel indeed is a fair and generous one and,
13 indeed, under the circumstances, the sentence that I
14 am about to impose is really the minimum for this
15 offence that I feel justified. however sake that

16 sub I sentence you to serve a term of imprisonment
17 of 12 months. the Criminal Code for an

18 auth In addition, I will place you on probation for
19 one year from the date of your release. The
20 conditions of your probation are that you are to
21 keep the peace and be of good behaviour. You are to
22 report to a probation officer and continue to report
23 as and when required. You are to attend all
24 counselling and any other treatment programs that
25 THE may be recommended for you by your probation
26 THE officer. Do you understand that, sir?

27 THE ACCUSED: the six (Nods in the affirmative).

1 THE COURT: I hope that you will work with
2 your probation officer and perhaps that will help
3 you get a grip on what you need to do to start
4 leading a productive life.

5 Furthermore, as requested by the Crown, and
6 indeed I see no discretion in the *Criminal Code* for
7 this, I will issue an order pursuant to
8 Section 487.051 of the *Criminal Code* directing that
9 a bodily sample be taken for forensic DNA analysis,
10 and I have signed the order, Mr. Claxton.

11 Furthermore, I also order pursuant to Section
12 109 of the *Criminal Code* that you be prohibited from
13 possessing any firearm or ammunition for a period of
14 not less than ten years from the date of your
15 release from prison. I will however make that
16 subject to the proviso that you may apply under
17 Section 113 of the *Criminal Code* for an
18 authorization to possess and use firearms for
19 sustenance purposes.

20 So, Mr. Sunrise, you are under a firearm
21 prohibition order but you can, if you are going out
22 on hunting trips, that sort of thing, apply for an
23 exemption from that prohibition order; do you
24 understand?

25 THE ACCUSED: (Nods in the affirmative).

26 THE COURT: You may have a seat.

27 Under the circumstances, I will waive the

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Victims of Crime fine surcharge.

Is there anything else, anything that I have neglected?

MR. CLAXTON: Not from the Crown.

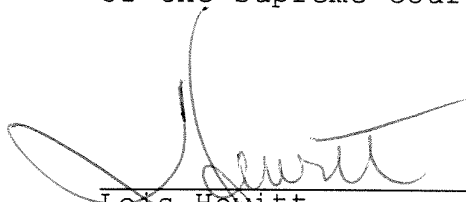
THE COURT: Mr. Shabala?

MR. SHABALA: Nothing further, Your Honour.

THE COURT: Then thank you for your submissions, gentlemen, we are adjourned until 9:30 tomorrow morning.

(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)

Certified pursuant to Rule 723 of the Supreme Court Rules.



Lois Hewitt,
Court Reporter