

R. v. Menacho, 2003 NWTSC 18

S-1-CR2002000116

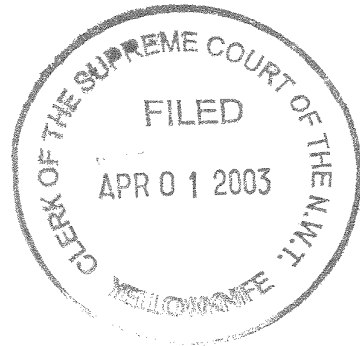
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

MATTHEW EARL MENACHO



Transcript of the Oral Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Yellowknife in the Northwest Territories, on March 6th A.D., 2003.

APPEARANCES:

Ms. S. Smallwood:

Counsel for the Crown

Mr. G. Boyd:

Counsel for the Accused

1 THE COURT: The offender has entered guilty
2 pleas to three charges: using a firearm while
3 committing an indictable offence, contrary to
4 Section 85(1)(a) of the *Criminal Code*; assault,
5 contrary to Section 266; and, breach of a firearm
6 prohibition order, contrary to Section 117.01. All
7 of these offences occurred as part of one event
8 which took place in Tulita on November 2nd, 2002.

9 The facts were set out in a comprehensive
10 Agreed Statement of Facts. I will not repeat them
11 here except in brief outline. The offender, who is
12 only 21 years old, and the 19 year old victim, with
13 whom the offender was in a romantic relationship,
14 the two of them living together at the time, were
15 drinking at a party. For some reason, the offender
16 accused his girlfriend of flirting with someone
17 else. He became violent, assaulting her, and then
18 he became dangerous, by taking a rifle and first
19 threatening the victim and then by threatening to
20 commit suicide (indeed by demanding that the victim
21 pull the trigger as he was holding the rifle to his
22 face). The victim eventually managed to get away.
23 It was, as Crown counsel described it, a prolonged
24 and terrifying experience for the victim. The
25 offender, to his credit, turned himself in to the
26 police. He has been in custody ever since.

27 All sentencing decisions have a number of

1 objectives. One is deterrence; another is
2 denunciation; and yet another is rehabilitation. In
3 addition, in this case, I must pay particular
4 attention to the offender's circumstances as an
5 aboriginal offender. The general principles,
6 however, remain the same. To paraphrase what was
7 said by the Supreme Court of Canada in R. v. Gladue,
8 [1999] 1 S.C.R. 688, the sentencing of all
9 offenders, including aboriginal offenders, must
10 proceed on an individualized or case-by-case basis.
11 What is the appropriate sanction for these offences,
12 committed by this offender, harming this victim, in
13 the community where these events occurred, and what
14 sentencing options present themselves in these
15 circumstances?

16 There are circumstances here that call for a
17 punitive sentence. The offender used a weapon in a
18 highly dangerous manner, while under the influence
19 of alcohol, and in a highly volatile emotional
20 situation. The victim was someone with whom it can
21 be said he was in a special position. The offender
22 has a criminal record, albeit a relatively minor and
23 unrelated one. But he has been convicted of three
24 criminal offences in the past two years and he has
25 been sent to jail previously. He should know that
26 there are consequences to one's actions. Also, at
27 the time of these offences, he was on a probation

1 order as well as an order prohibiting him from
2 possessing firearms. This was a crime of violence in
3 the context of a domestic relationship, a type of
4 crime that sadly is all too prevalent in many of our
5 communities. All of these are aggravating factors
6 that oblige me to emphasize the objectives of
7 deterrence and denunciation.

8 There are also mitigating circumstances that
9 call for a rehabilitative or restorative sentence.
10 The offender is a relatively young man. He has taken
11 responsibility for his actions by pleading guilty at
12 an early opportunity. He waived the requirement for
13 a preliminary hearing. He knows he did something
14 horribly wrong. This was evident when he spoke
15 before sentencing, spoke quite eloquently in my
16 view, about his awareness of the need to change his
17 life. I believe him to be quite sincere and serious
18 in these aims.

19 The offender's background suggests positive
20 prospects for rehabilitation and re-integration with
21 his community. He has the continuing support of his
22 family. Some years ago he committed himself to
23 learning about his people's culture and traditions.
24 He has achieved some success in this and has
25 participated extensively in activities meant to
26 promote and display these traditions. He has
27 continued his education and has the support of his

1 Chief and Band Council. All of this speaks in his
2 favour.

3 The victim, through her Victim Impact
4 Statement, has expressed forgiveness and a desire to
5 resume an ongoing relationship with the offender.
6 While such wishes cannot be determinative of any
7 sentence, they are significant in terms of
8 suggesting and reinforcing the prospects of
9 rehabilitation and restoration. It also suggests
10 that the victim, at least, considers this behaviour
11 to be out-of-character for this offender.

12 Balancing all of these factors, I have
13 concluded that there must be some period of
14 incarceration but that period can be kept to a
15 reasonable length, within the broad parameters
16 suggested by counsel, and followed by a lengthy
17 period of probation so as to assist the offender in
18 his rehabilitative efforts and to provide some
19 controls on his behaviour.

20 I have taken into account the time spent in
21 pre-trial custody. In the result I will impose the
22 following sentence which will result in the offender
23 being sentenced to a total of 13 months of actual
24 incarceration and probation for a period thereafter.

25 On Count 1, the offence of using a firearm, the
26 sentence is the mandatory minimum of 12 months
27 imprisonment.

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On Count 6, the offence of possessing a firearm while prohibited to do so, the sentence is one month imprisonment to be served consecutively.

On Count 3, the offence of assault, I suspend the passing of sentence for two years and place the accused on probation with the following conditions:

He is to keep the peace and be of good behaviour. He is to report to this Court if and when required to do so. He is to report to and be under the supervision of a probation officer. He is to participate in any counselling, education, or training programs as may be directed by his probation officer. He is prohibited absolutely from possessing or consuming any alcoholic or other intoxicating substances. He is to submit on the demand of a peace officer to the provision of a sample of his breath for purpose of analysis to ascertain compliance with this order. He is to perform 100 hours of community service work under the supervision of his probation officer.

I am required to consider a further firearms prohibition order. Crown counsel requests a lifetime prohibition. Considering the offender's age, and his personal characteristics and the nature of his community, I think a lifetime prohibition would be unduly onerous and unjustified. I will therefore impose an order prohibiting the offender from having

1 in his possession any firearms or ammunition for a
2 period of ten years starting from the date of his
3 release. I will also, however, invoke the provisions
4 of Section 113 of the *Criminal Code* to exempt him
5 from this order for the purpose of subsistence
6 hunting. On those occasions necessary arrangements
7 can be made so that he can participate in such
8 endeavors.

9 In my opinion, since this is a secondary
10 designated offence and the offender is not a first
11 offender, I think it is appropriate to require him
12 to provide a bodily sample for DNA analysis and I so
13 order.

14 Further, there will be an order under
15 Section 491 of the Code forfeiting to the Crown the
16 firearm seized in this case, that being the
17 Remington Model 7600, .270 calibre rifle, serial
18 number 8579391.

19 Finally, considering the circumstances, there
20 will be no order for a victim of crime fine
21 surcharge.

22 Mr. Menacho, I am sure that your counsel will
23 go over in detail the terms of this disposition. But
24 the fact that part of it consists of a suspended
25 sentence and a period of probation means that if you
26 do not follow any of those conditions or if for some
27 reason you get into some further problem with the

1 law, you can be charged for that. But more
2 significantly, you can be brought back before me for
3 resentencing on the assault charge in particular and
4 at that time I may look very skeptically on whatever
5 may be said about your good intentions. I took your
6 words to heart. I took them to be seriously meant,
7 and I wish you luck in the future. You are still a
8 young man, there are many years ahead of you.

9 With respect to the remaining counts,
10 Ms. Smallwood?

11 MS. SMALLWOOD: Sir, I would ask that they be
12 withdrawn.

13 THE COURT: There has been no plea entered
14 formally in this Court so we can mark them
15 withdrawn.

16 MS. SMALLWOOD: Thank you, sir.

17 THE COURT: I think technically the more
18 appropriate manner of proceeding would be to issue a
19 stay of proceedings. But either way, we will mark
20 them withdrawn since there was no plea entered in
21 this Court formally after the re-election.

22 Anything that I have neglected, Mr. Boyd?

23 MR. BOYD: No, sir, I believe not.

24 THE COURT: Ms. Smallwood?

25 MS. SMALLWOOD: No, sir.

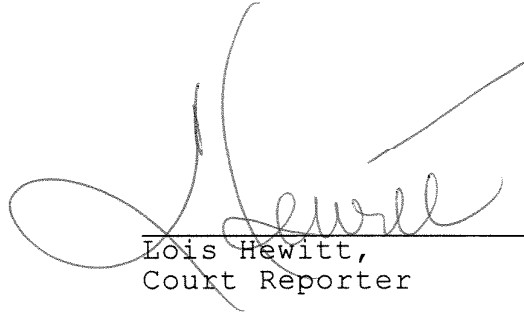
26 THE COURT: Very well. I want to express my
27 appreciation for both of your submissions on this

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matter.

(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)

Certified pursuant to Rule 723
of the Supreme Court Rules.



Lois Hewitt,
Court Reporter