

R. v. Atigikyoak, 2002 NWTSC 90

S-1-CR2002000083

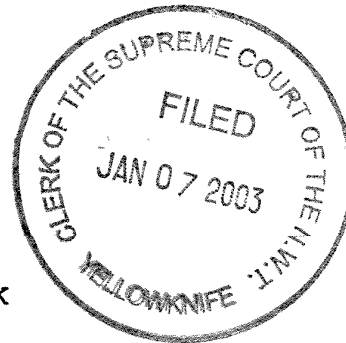
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

SHOVENAI ATIGIKYOAK



Transcript of the Oral Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Yellowknife in the Northwest Territories, on December 19th A.D., 2002.

APPEARANCES:

Ms. S. Bond:	Counsel for the Crown
Mr. S. Duke:	Counsel for the Accused

Charge under s. 267(b) Criminal Code of Canada

1 THE COURT: Shovenai Atigikyoak has entered a
2 plea of guilty to a charge that on June 12th, 2002,
3 she assaulted Robert Stirrett causing bodily harm to
4 him.

5 The guilty plea did not come at the earliest
6 opportunity. There was a preliminary hearing in
7 this case. The plea is still worthy of considerable
8 credit, however, since in my opinion it represents a
9 sincere sign of remorse and a willingness to accept
10 responsibility.

11 In this, as in any other sentencing, there are
12 a number of objectives in sight. One is deterrence,
13 both general and specific; another is denunciation
14 of the violent conduct exhibited by this accused;
15 and still another is the prospect of rehabilitation
16 so that this accused can effect a permanent change
17 in her behaviour.

18 In addition, I am directed to consider all
19 reasonable available sanctions and, since this
20 accused is an aboriginal offender, I must pay
21 particular attention to her circumstances and any
22 unique systemic or background circumstances that
23 brought this person before the Justice system. The
24 Supreme Court of Canada has admonished trial judges
25 that the sentencing decision "must be holistic...
26 taking into account all of the surrounding
27 circumstances of the offence, the offender, the

1 victim, the community, including the unique
2 circumstances of the offender as an aboriginal
3 person" (R. v. Gladue, [1999] 1 S.C.R. 688, at
4 para. 81).

5 The accused and victim have lived in a
6 common-law relationship for the past year. Indeed,
7 the accused is pregnant with their child. On the
8 date in question, they had been drinking and got
9 into an argument. The argument became violent. At
10 one point, the accused grabbed the victim by the
11 hair, pulled his face close to hers, and then bit
12 him on the chin. She bit him with such force that
13 she tore a chunk of skin from his chin. The victim
14 required surgery to re-attach the skin but, while
15 the wound has healed, the re-attachment was not
16 successful.

17 The aggravating features of this case are,
18 beside the basic fact that this was, as Crown
19 counsel put it, a violent act in the context of an
20 intimate relationship, but also that the accused had
21 assaulted this victim previously, had been punished
22 for it, and was on probation at the time that she
23 did this act. She has been convicted twice of
24 assaulting the victim, once with a knife, and twice
25 for breaching conditions, all in the past year. She
26 has been incarcerated and put on probation. Indeed,
27 the entire relationship has been volatile. I was

1 told that the victim here, Mr. Stirrett, was himself
2 convicted of an assault on the accused and is
3 currently on probation.

4 The victim says that he wants the relationship
5 to continue. They both want to continue the
6 relationship. Generally speaking the Courts are
7 reluctant to give too much weight to the attitude of
8 the victim when dealing with an ongoing
9 relationship. There are too many unknown dynamics at
10 work to be able to draw the appropriate conclusions.
11 Furthermore, the objectives of sentencing have to be
12 considered in the context of society's overall best
13 interests. It is necessary therefore to balance
14 conflicting considerations rather than serving any
15 single objective at the expense of all others.

16 The accused is 24 years old. She grew up in
17 Kugluktuk, an Inuit community on the Arctic Coast,
18 and then lived in some other places with her parents
19 before moving to Yellowknife five years ago. She has
20 a child from a previous relationship who has been
21 adopted by the accused's parents.

22 Defence counsel stated that he could point to
23 no particulars that would be relevant for
24 consideration vis-a-vis this accused's circumstances
25 as an aboriginal offender. The pre-sentence report
26 seems to support that. The accused's home
27 environment was not permeated by alcohol abuse or

1 domestic violence. She recalls that she received
2 affection as a child and witnessed affection around
3 her. The family did report some problems but nothing
4 as serious as we so often see in these types of
5 cases. Something obviously went wrong somewhere
6 since the pre-sentence report notes long-standing
7 alcohol abuse and relational problems in this
8 accused's life. She apparently now recognizes the
9 need for counselling and education upgrading. She
10 has been attending some counselling while
11 incarcerated prior to sentencing.

12 Both counsel say there is a need for some
13 ongoing structure that a probation order can
14 provide. Both recognize as well that the seriousness
15 of this offence requires some period of
16 incarceration. Where they differ is on the length of
17 the incarceration.

18 Defence counsel acknowledged that a conditional
19 sentence is not appropriate in this case.

20 I agree with counsel that what is required is
21 some mechanism whereby some structure can be
22 provided to this accused, to her common-law partner,
23 and some conditions that perhaps can maximize the
24 chances of success for them and their soon to be
25 born child. Yet at the same time, because of the
26 nature of the offence, I think there is no
27 alternative but to impose as well a period of

1 incarceration taking into account the violent nature
2 of the crime and the fact that she has been
3 previously convicted for the same type of offence.

4 I thank both counsel for their submissions,
5 they have been very helpful to me.

6 Taking into account all of the relevant
7 factors, including the time spent in pre-trial
8 custody, I sentence the accused to a term of
9 imprisonment of 12 months to be followed by
10 probation for a further period of 12 months.

11 The conditions of that probation will be as
12 follows: She is to keep the peace and be of good
13 behaviour. To attend Court when and if required to
14 do so. To report forthwith upon her release to a
15 probation officer and to continue to report as and
16 when required. To attend and take part in all
17 counselling and rehabilitative programs that may be
18 recommended by the probation officer. She is to
19 abstain absolutely from the consumption of alcohol
20 or nonprescription drugs. Furthermore, she is not to
21 live in any residence where alcohol is maintained.
22 And she is to submit upon the demand of a peace
23 officer to the provision of a breath sample to
24 analyze for the presence of alcohol.

25 Ms. Atigikyok, I think, based on everything
26 that I have heard, that it may now be the time when
27 you have come to realize the steps that you need to

1 take and if you and Mr. Stirrett are serious about
2 continuing this relationship, then obviously it is
3 something that both of you will have to address. You
4 are going to need a lot of help and support and,
5 indeed, you are going to need to help and support
6 each other, not only for your benefit but for the
7 benefit of your child. So I wish you luck.

8 In addition, I will impose the mandatory
9 firearm prohibition order for a period of ten years
10 as required by Section 109 of the *Criminal Code*.

11 Under the circumstances, there will be no
12 Victims of Crime fine surcharge.

13 Is there anything that I have neglected,
14 counsel?

15 MS. BOND: No, sir.

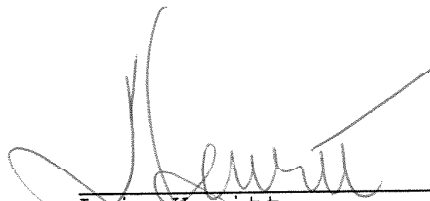
16 MR. DUKE: No, sir.

17 THE COURT: Thank you for your submissions.

18 **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

19 Certified pursuant to Rule 723
20 of the Supreme Court Rules.

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Lois Hewitt,
Court Reporter