

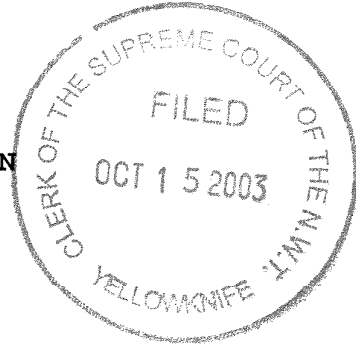
R. v. Vermillion, 2003 NWTSC 59

S-0001-CR-2003000036

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- vs. -

GEORGE LLOYD VERMILLION

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Transcript of the Oral Reasons for Sentence by The Honourable Justice V.A. Schuler, at Fort Smith, in the Northwest Territories, on October 2nd, A.D. 2003.

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APPEARANCES:

Ms. C. Carrasco: Counsel for the Crown  
Mr. M.E. Hansen: Counsel for the Accused

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Charges under s. 279(2), 271, 264.1(1)(a), 267(a) X 2  
Criminal Code of Canada

**Ban on Publication of Complainant / Witness  
Pursuant to Section 486 of the Criminal Code**

1 THE COURT: George Vermillion is before me  
2 today to be sentenced, having been found guilty by the  
3 jury last night of a number of offences of violence  
4 committed against the victim with whom he had an  
5 intimate relationship and was living at the time in  
6 September and October of 2002. I will refer to the  
7 victim simply by using the words "the victim" to  
8 observe the publication ban on her name.

9 As I understood the evidence, the victim and Mr.  
10 Vermillion lived together for approximately six weeks  
11 to two months in the time frame I have referred to.  
12 The focus of the evidence that the jury heard was on  
13 two separate dates.

14 The first incident in mid-October occurred after  
15 the victim and Mr. Vermillion had been drinking with  
16 friends, although there was no evidence that Mr.  
17 Vermillion was intoxicated to any extent. Mr.  
18 Vermillion apparently became jealous and angry and  
19 ordered everyone else out of the house. He inflicted a  
20 beating on the victim. The jury found him guilty of  
21 assault only, not assault with a weapon. So I infer  
22 that they found that he beat her with his hands, kicked  
23 her and made the mess in her hair with corn syrup and  
24 the other materials that she referred to in her  
25 evidence.

26 She tried, unsuccessfully, to wash it out in the  
27 shower. He dragged her to the bed. She was trying to

1 fight him, and, as she described it, he grabbed her by  
2 the vagina, twisting, pulling and wrenching her  
3 vagina. During this sexual assault he was punching her  
4 in the face and head and making accusations about  
5 another man.

6 The victim said that this went on for hours. She  
7 tried to get out of the bed at one point when she  
8 thought he was asleep, but he was still grabbing onto  
9 her vagina and he stopped her from leaving. He  
10 threatened to kill her if she tried to leave. She  
11 tried three times to leave and was not able to, and  
12 then in the morning when Mr. Vermillion went to have a  
13 shower he threatened again to kill her if she left, and  
14 he left the shower curtain and door open from which he  
15 was able to see the only door leading outside. These  
16 are the facts that underlie the unlawful confinement  
17 charge and the threat convictions.

18 The victim was able to run out of the house while  
19 he was in the shower, although Mr. Vermillion did chase  
20 after her for a time, but it seems that he had no  
21 clothes on and turned back.

22 The victim testified that physical assaults and  
23 threats and sexual assaults of grabbing and twisting  
24 her vagina and breasts happened on more than one  
25 occasion. While there was no detail given as to those  
26 other occasions, I am satisfied on her evidence that  
27 the assaults, sexual assault and threats were not

1 isolated occurrences and that Mr. Vermillion did  
2 attempt to control her and monitor her whereabouts as  
3 she described during their relationship.

4 Count 5 in the indictment refers to a separate  
5 incident on approximately October 20th. The jury found  
6 Mr. Vermillion guilty of assault only on that count.  
7 The evidence, therefore, I infer that was accepted was  
8 that a few days after the unlawful confinement that I  
9 have just described Mr. Vermillion saw the victim as  
10 she was passing his house. Again, I infer from the  
11 evidence that she was staying at the women's shelter at  
12 the time. He saw her. He chased after her. He began  
13 assaulting her. And, again, because of the verdict I  
14 infer that the jury found that this assault was  
15 committed without a weapon, with his hands, his feet.  
16 She testified he got her to come into his house,  
17 punched her, made accusations about other men, spit at  
18 her, called her names and basically abused her for two  
19 or three hours until he fell asleep or passed out.

20 All of these assaults, these actions taken by Mr.  
21 Vermillion were demeaning and violent. The sexual  
22 assault I find in the circumstances as described by the  
23 victim, the specific occasion that she described, but,  
24 obviously, as well as the fact that it occurred on  
25 other occasions, that a similar assault occurred on  
26 other occasions, can only have been meant to degrade  
27 her and cause her physical pain.

1           It is different from many of the sexual assaults  
2 that come before this Court in that in many cases the  
3 intention of the offender is really to satisfy his own  
4 sexual needs, but here, whether or not that was part of  
5 the intention, I infer that there was a clear intention  
6 also to cause the victim pain and to humiliate her.  
7 And, as I have said, I'm satisfied on her evidence that  
8 this was not simply one incident, that it did occur  
9 more than once.

10           The victim in this case clearly is a troubled  
11 person and she has had serious problems, including  
12 problems with alcohol. The relationship between her  
13 and Mr. Vermillion is clearly what one might describe  
14 as a dysfunctional relationship. Nevertheless, it was  
15 a relationship. She was living in his home and he was  
16 in a position of trust toward her, and, as such, she  
17 was entitled to respect from him and entitled not to  
18 expect this degrading and violent behaviour. So the  
19 breach of that trust is an aggravating factor.

20           The fact that the sexual assault, threats and  
21 assaults were not isolated incidents is also an  
22 aggravating factor. The nature of the assaults and the  
23 clear intention to degrade her is also aggravating. I  
24 take note of the fact that there were injuries that  
25 resulted; in particular, bruising, especially to the  
26 victim's leg area, and she also described redness and  
27 what she thought were broken blood vessels in her

1           vagina. She described back pain and discomfort and  
2           also testified that eventually she became suicidal.  
3           Her hair was so badly tangled from the assault with the  
4           mustard that despite the counsellor's efforts to find a  
5           way to get the mess out of it, in the end it had to be  
6           cut off.

7                     There was some evidence from the counsellor at the  
8           women's shelter that the victim took particular care of  
9           her hair. And, again, I find in that incident a clear  
10          intention on the part of Mr. Vermillion to humiliate  
11          her, to hurt her by doing that to something that she  
12          obviously was quite proud of in her life where there  
13          may not have been a lot of other things she was proud  
14          of, considering the difficulties she has had.

15                    There really are no mitigating factors in this  
16          case. There has been no guilty plea, although Mr.  
17          Vermillion did admit to the counsellor, Ms. Simon, and  
18          also to the police on his arrest that he had assaulted  
19          the victim. It is not aggravating, obviously, that he  
20          pleaded not guilty and exercised his right to a trial.  
21          It is his right to do that. It simply means that he  
22          doesn't get the mitigating effect of a guilty plea.

23                    I listened to the remarks that Mr. Vermillion made  
24          in court this morning, and it appeared to me that his  
25          concern is mainly focused on himself and what he has  
26          been through. I did not detect any remorse for what he  
27          did to the victim. It appears that he blames the

1 relationship. But, clearly, one has to look at the  
2 people involved in any relationship, because it's the  
3 people who take the actions, and in this case there was  
4 no suggestion at all that there was any violence by the  
5 victim. It was only violence by Mr. Vermillion against  
6 her.

7 Courts have said over and over that for situations  
8 of abuse in a relationship denunciation and deterrence  
9 are prime considerations. The sentence to be imposed  
10 should reflect how society, how the community condemns  
11 behaviour such as that Mr. Vermillion has engaged in,  
12 and it should also help deter or discourage others from  
13 such behaviour.

14 Now, in this case, although obviously  
15 rehabilitation is never something that is to be  
16 disregarded, I have to be concerned also about  
17 deterring Mr. Vermillion. And that is a particular  
18 concern, because, as was indicated in the submissions  
19 this morning, after committing these offences, although  
20 before he was actually charged, but after the victim  
21 and he were no longer living together, he came up to  
22 her in a mall in Yellowknife and punched her in the  
23 side of the head. He was charged with assault for that  
24 and was released on conditions, which included a  
25 non-contact clause.

26 He was arrested on the unlawful confinement,  
27 sexual assault, assault and threatening charges on

1           January 25th and released on January 26th and then  
2           breached the non-contact clause of the earlier release  
3           on January 27th. He has been in custody since  
4           approximately January 28th, and I will refer to the  
5           pre-trial custody further on.

6           So the fact that the victim in this case came to  
7           Yellowknife, had left Mr. Vermillion, the fact that  
8           prior to that they had undertaken some counselling  
9           together in Fort Smith, none of that stopped Mr.  
10          Vermillion from, again, in what I conclude must have  
11          been fairly brazen fashion simply walking up to her in  
12          a mall and punching her. Then the arrest, the  
13          non-contact clause, none of that stopped him from  
14          contacting her when he knew he wasn't allowed to. So  
15          it seems to me that stopping Mr. Vermillion from any  
16          further violence on the victim or any other woman he  
17          might form a relationship with has to be a goal of the  
18          sentence on these offences.

19          The Crown seeks a sentence of three to four years  
20          in jail. The defence seeks one of 12 months to two  
21          years less a day and asks that it be conditional. As  
22          part of the defence position, evidence was given by  
23          Cheryl Foote, who has 15 years' background in  
24          counselling and counselled Mr. Vermillion for five  
25          years starting in 1993 or 1994.

26          As I understand it, this was alcohol counselling,  
27          and after the five years, although Mr. Vermillion was



1 no longer in the counselling program, he and Ms. Foote  
2 remained friends and saw each other socially. Ms.  
3 Foote's evidence was that the program had strict  
4 guidelines and that Mr. Vermillion had responded very  
5 well to them, and, also, that he had done well enough  
6 to be asked to deliver part of the outreach program.

7 Ms. Foote testified that she is prepared to  
8 continue counselling with Mr. Vermillion and believes  
9 that he would do well. She also spoke of a network  
10 that the counsellors in Fort Smith are trying to set up  
11 so that all would work together with one person,  
12 although it does not appear that this is organized  
13 yet.

14 I accept that Ms. Foote is sincere in her wish to  
15 help Mr. Vermillion. However, I note, as well, that  
16 Mr. Vermillion's problem is not just alcohol. From the  
17 evidence, clearly, it is anger, jealousy and the use of  
18 violence.

19 Mr. Vermillion took counselling with Ms. Foote for  
20 five years. The evidence before the jury was that he  
21 was in some way involved with Alcoholics Anonymous when  
22 the victim of these offences met him. He went to  
23 counselling with her with Ms. Simon before the December  
24 18 assault that occurred in Yellowknife. His counsel  
25 indicated that he has had counselling in the past. He  
26 is 53 years old. None of the help that he has had  
27 seems to have worked, other than temporarily.

1           In other words, during counselling it appears  
2           that, from Ms. Foote's evidence, in any event, he has  
3           been able to do fairly well. It appears that he has  
4           not done well all the time when on probation, and  
5           that's evident from his record, to which I will refer  
6           in a moment.

7           I am not coming to the conclusion that counselling  
8           will not help Mr. Vermillion, but I have to say that I  
9           have concerns that he doesn't follow through with it.

10           I also have to take into account Mr. Vermillion's  
11           criminal record. It is a lengthy one. It spans from  
12           1966 to 2003. It consists mainly of property offences  
13           and breaches of various court orders. There is one  
14           earlier assault in 1992 about which I was not given any  
15           details, and then there is the assault on the victim of  
16           these offences that was committed in Yellowknife in  
17           December, 2002. Obviously, that was after the assaults  
18           that are before me now were committed.

19           The fact that Mr. Vermillion has fairly regularly  
20           come into conflict with the law over the years and that  
21           he has, again, fairly regularly breached court orders  
22           has to cause concern about his ability to follow  
23           through with commitments he makes to the court.

24           From what I have been told here today, Mr.  
25           Vermillion himself had a troubled childhood. I was  
26           told by his counsel that he began drinking at the age  
27           of nine. His sisters are present in court and are

1           supportive of him.

2           He is an Aboriginal man, and that is a  
3           consideration that I am to take into account. However,  
4           as discussed in the Gladue case, there is no evidence  
5           before me of any systemic or institutional factors that  
6           have brought Mr. Vermillion to where he is today; in  
7           other words, here in court. The fact that he is  
8           Aboriginal is not relevant to the offences and it is  
9           not a factor that I feel is going to be of significance  
10          in the sentence in this case.

11          As I understand the pre-trial custody situation,  
12          Mr. Vermillion was in custody for approximately 36  
13          hours initially on most of these charges, having been  
14          arrested on January 25th. He was then released on  
15          January 26th. He was rearrested January 28th for the  
16          breach of his undertaking that he was on as a result of  
17          the December assault charge and for the fifth count in  
18          the indictment. He remained in custody until he  
19          pleaded guilty to the December assault and the breach  
20          of undertaking on June 18th, and he finished serving  
21          the five-month sentence for those two offences on  
22          September 26th.

23          I cannot see any logical basis for giving Mr.  
24          Vermillion credit in this sentence for the sentence  
25          that he served on the December assault and the breach,  
26          notwithstanding that he was on remand at the same time  
27          as he was serving the time on those offences.

1           As for the approximate five months he was in  
2 remand after the January 28th arrest, that remand, I  
3 infer, resulted from his breach of the undertaking, or  
4 was at least in part the result of his breach of  
5 undertaking. It is not clear to me, and it wasn't  
6 really addressed, why the charge in count 5 of the  
7 indictment wasn't laid until then, but I infer that it  
8 was really the breach that would have resulted in his  
9 not being released again.

10           In all the circumstances, what I am going to do is  
11 credit him six months for the pre-trial custody. It is  
12 a discretionary matter, and, in my view, where there  
13 has been a breach of a previous release order, that is  
14 a reason why the remand time might not be given the  
15 credit that it otherwise is sometimes given. So in  
16 this particular case, I am going to credit six months  
17 towards the total sentence that I intend to impose.

18           I have reviewed the cases that Mr. Hansen  
19 submitted. I think Mr. Hansen has said probably  
20 everything that could be said in this case, and he  
21 reviewed the cases quite carefully. There are some  
22 similarities in the cases. There are also many  
23 differences. Sentencing is always an individualized  
24 process.

25           In this particular case, in light of the violence  
26 that was used and the degradation, as counsel have  
27 acknowledged, a term of incarceration is appropriate.

1 In light of the length of the term that I am going to  
2 impose, a conditional sentence is not available.

3 Stand up, please, Mr. Vermillion. On counts 1 to  
4 4 of the indictment, and looking for a moment at the  
5 event that took place involving the unlawful  
6 confinement, in my view, there was really one  
7 continuous assault, and I use that word in a very  
8 general sense, over a period of several hours, and that  
9 assault included the unlawful confinement, the physical  
10 assaults on the victim, the sexual assault and the  
11 threats. So what I am going to do is look at that  
12 occurrence in a global sense and impose a global  
13 sentence and make it concurrent on each count rather  
14 than dividing it up among the counts.

15 I am also taking into account when I do that that  
16 other similar assaults, sexual assaults and threats  
17 were made on other occasions, and that what occurred on  
18 the one night when the unlawful confinement took place  
19 was not an isolated act by Mr. Vermillion.

20 So in all the circumstances, on counts 1 to 4 in  
21 the indictment I sentence you to two years'  
22 imprisonment concurrent on each count. On count 5 in  
23 the indictment, which is a separate incident of  
24 assault, six months consecutive. You may have a seat,  
25 Mr. Vermillion.

26 I have not heard any submissions as to why there  
27 should not be a DNA order, and, as the section 271

1           offence is a primary designated offence, there will be  
2           a DNA order, the sample to be taken as soon as  
3           feasible.

4           I have also not heard any submissions as to why  
5           there should not be a section 109 firearm prohibition  
6           order. So I impose such an order. It will commence  
7           today and will expire 10 years after Mr. Vermillion's  
8           release from imprisonment. And unless there are  
9           submissions to the contrary, any such items covered by  
10          that order are to be surrendered forthwith to the  
11          RCMP. The victim of crime surcharge is waived.

12          Mr. Vermillion, I hope in the circumstances that  
13          you will spend some time thinking. I'm not downplaying  
14          the hardships that you have had in your life, but if  
15          you have traumatic events in the past to deal with,  
16          then get some help for them. Don't take it out on  
17          other people with your fists and your feet. I'm sure  
18          you don't want to spend the second half of your life in  
19          jail. So I would suggest you think about that pretty  
20          carefully.

21                    Is there anything further?

22          MR. HANSEN:                    Perhaps just to clarify for the  
23                    record, the sentence of two years plus the six months  
24                    consecutive is after giving six months' credit for --

25          THE COURT:                    That's right.

26          MR. HANSEN:                    Thank you.

27          MR. CARRASCO:                 Nothing further.


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THE COURT: Anything from defence? All right.

Thank you, counsel, and we will close court.

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

Certified to be a true and accurate transcript pursuant to Rules 723 and 724 of the Supreme Court Rules.

  
\_\_\_\_\_  
Jill MacDonald, CSR(A), RPR  
Court Reporter