

R. v. Ian Adam Kirby, 2004 NWTSC 73

S-1-CR2003000103

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

IAN ADAM KIRBY

Transcript of the Reasons for Sentence of The Honourable
Justice J.Z. Vertes, at Yellowknife in the Northwest
Territories, on October 25th A.D., 2004.

APPEARANCES:

Ms. L. Colton: Counsel for the Crown
Ms. K. Payne Counsel for the Accused

Charge under s. 220(b) *Criminal Code of Canada*

THE COURT: The accused was convicted by me, after trial, of the offence of criminal negligence causing death.

I found, based on the evidence presented to me, that the accused stood by while his wife committed suicide. This came after many hours of drinking alcohol and arguing. It was not until the accused's 7-year-old stepson intervened, and asked him to do something, that the accused untied his wife (who had killed herself by tying a shower curtain around her neck). The accused, however, took no steps afterward to assist his wife or to obtain help. Based on all of this, I concluded that his conduct, his failure to act, attained the level of criminal behaviour.

The Crown now seeks a term of imprisonment of three to four years. Defence counsel argues, on the other hand, that the accused "has been punished enough". He has spent a total of eight months in jail on remand. Both counsel agree, however, that there are no precedents to guide us in sentencing the accused for this offence. It is unique.

That is due in part to the fact that this offence occurred within a particular family situation. And, as I said during the submissions, each family dynamic is unique.

But it is also due to the nature of the offence. There is no set range for sentencing for the crime of criminal negligence. The Criminal Code sets out a potential maximum penalty of life imprisonment but there is no mandatory minimum penalty.

Criminal negligence is a crime that can be committed in a countless number of ways. The common denominator is that the accused's conduct represents a marked departure from the standard of care expected from a reasonable person in the circumstances. There is some conduct that involves some degree of inherent risk that leads to death. The degree of culpability therefore is related to the degree of risk. It is also related to the nature of the duty imposed on the accused and the degree of wanton or reckless disregard demonstrated by the accused.

This is important because the fundamental objective in sentencing is to impose a sentence that is proportionate to the degree of blameworthiness of the offender and the seriousness of the offence.

In this case the duty is clear. The Criminal Code requires that a spouse provide the necessaries of life to his or her spouse. There can be no more fundamental necessary than the

prevention of death. Other than the duty of a parent toward a child, it is hard to conceive of a more basic human duty in our society.

The degree of risk and wanton disregard are also self-evident. Any adult in the situation of the accused would have been, and should have been, aware of the risk of death and the need to intervene so as to prevent death. On any reasonable standard set by a civilized society, this seeming indifference to his wife's fate is what elevated the accused's conduct to the level of criminality.

Thus the degree of moral and legal blameworthiness is high. The results of this tragedy have affected numerous people, in particular the deceased's young son. All this is highly aggravating.

However, I must consider as well any mitigating circumstances. The accused is 60 years old. He has a long and productive work history. He is a skilled mechanic and welder. He has been married three times; he is the father of four children; and, a grandfather and stepfather. He has loving and strong support from his family notwithstanding the fact that he has been estranged from them for some time. It is readily apparent that he is considered kind

and helpful. But it is also readily apparent that he has had a long-standing problem with alcoholism. However, he has no history of violence. His criminal record is minor and unrelated to today's crime.

In my opinion, while I certainly do not think that there is a need for specific deterrence, nor do I think that much can be done by way of general deterrence, since suicide and the reasons for it are unique to each situation, being by nature not prone to rational deliberation, there is still a need to send a message that there is a duty owed within a family, each to the other, and that our society will not tolerate the wanton or reckless disregard of another person's life. The inherent risk in the omission to act, as demonstrated here by the accused, is such as to justify a denunciatory sentence.

In my opinion, an appropriate sentence would be one of three years' imprisonment. However, the law requires me to take into account the time served by the accused on remand. Ordinarily that time is credited as two-for-one so the credit for eight months remand time is 16 months. Therefore, the sentence of three years is reduced to an effective sentence of 20 months.

Since the sentence is below two years, I must give consideration as well to a conditional sentence. While I am satisfied that the accused does not pose a danger to the community, the very reasons why I think a penitentiary sentence is warranted are the same reasons why I think that a conditional sentence would not satisfy the principles and objectives of sentencing, particularly in sending a denunciatory message to the community at large.

Stand up, Mr. Kirby.

There is, I think, very little else that I can say in this case. You are a mature man and probably the only thing that I can say is that you still have many years ahead of you.

The sentence of this Court is 20 months incarceration. You may have a seat.

I am not going to impose any other sanction, counsel. There will be no Victims of Crime fine surcharge in the circumstances.

Is there anything else that we need to address, Ms. Colton?

MS. COLTON: Just the exhibits, Your Honour, I suppose.

THE COURT: Well, if I recall correctly, the physical exhibits that were entered at trial I directed be retained in the custody of the RCMP

or the Crown.

MS. COLTON: That's correct, yes.

THE COURT: So those exhibits will be retained until completion of the appeal period. If no appeal is filed, then they can be disposed of as warranted. The paper exhibits and other things that are on the Court file will remain on the Court file.

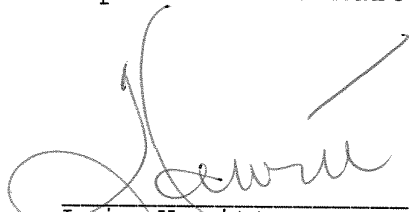
MS. COLTON: Thank you, Your Honour.

THE COURT: Anything else, Ms. Payne?

MS. PAYNE: No, sir.

THE COURT: Thank you, counsel, for your submissions. We are adjourned.

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



Lois Hewitt,
Court Reporter