

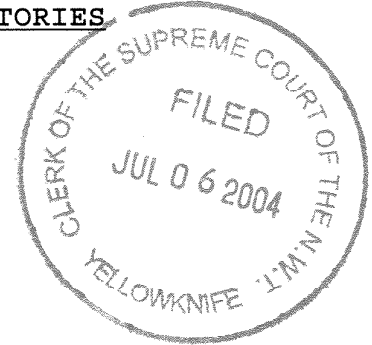
R. v. Dillon, 2004 NWTSC 39

S-1-CR-2003000058

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- vs. -

CHARLENE PATRICIA DILLON

Transcript of the Sentence by The Honourable Justice J.E. Richard, at Fort McPherson in the Northwest Territories, on Wednesday, June 23 A.D., 2004.

APPEARANCES:

Mr. N. Sinclair: Counsel for the Crown
Mr. T. Boyd: Counsel for the Accused

Charge under s. 268 Criminal Code of Canada

1 THE COURT: Today it is my responsibility to
2 impose an appropriate sentence in the case of a
3 21-year-old aboriginal woman who has committed a
4 serious crime of violence, that is the crime of
5 aggravated assault by stabbing her common-law husband
6 with a knife on March 16th, 2003, contrary to section
7 268 of the Criminal Code.

8 This violent crime carries a maximum sentence of
9 14 years' imprisonment. There is no minimum punishment
10 or sentence prescribed by law for this offence. The
11 court, therefore, has a wide discretion in determining
12 an appropriate sentence, taking into consideration the
13 personal circumstances of the offender, the particular
14 circumstances of her crime and all the time attempting
15 to carry out the purpose and objectives of sentencing
16 as required by Parliament.

17 As in most cases, there are both aggravating
18 factors and mitigating factors present here. The
19 offender is 21 years old and of Inuvialuit descent. As
20 described in the presentence report, she was raised by
21 her parents here in Fort McPherson and obtained Grade
22 10 education at the local school here.

23 Since 1999 she has been in a common-law
24 relationship with Clarence Alexie, the victim of her
25 crime. They have two children. Their ages are four
26 years and nine months. Her common-law husband has
27 steady employment and Ms. Dillon looks after the

1 children. She is not employed at present but in the
2 past has had sporadic employment as a cashier at
3 Northern Store and the Co-op store.

4 She says that she started drinking alcohol when
5 she was 14 years old and admits to having an alcohol
6 abuse problem. On the date that she committed the
7 crime for which she is to be sentenced, she had been on
8 a one-day drinking binge. Her husband Clarence Alexie
9 was also intoxicated. During a drunken argument
10 between the two of them in their home, which escalated
11 to pushing and shoving, Ms. Dillon picked up a steak
12 knife and stabbed Mr. Alexie in the chest. There was a
13 great deal of bleeding from the stab wound.
14 Fortunately Mr. Alexie received immediate medical
15 attention at the health centre here and was then
16 medivac'd to Inuvik where he was treated and where he
17 remained in hospital for six days. At the time of this
18 offence, Ms. Dillon was two months pregnant with their
19 youngest child.

20 I am told that the relationship between Mr. Alexie
21 and Ms. Dillon has been a tumultuous one and that it is
22 a regular occurrence for one of them to make a
23 complaint of domestic violence to the police. Indeed,
24 nine months after the stabbing in December of 2003, Mr.
25 Alexie committed an assault on Ms. Dillon and is
26 currently serving a 40-day intermittent sentence.

27 Ms. Dillon's criminal record is not a significant

1 factor, the only entries being for unrelated offences
2 as a youth some seven years ago.

3 It is an aggravating feature here, as pointed out
4 by Crown counsel and as Parliament has directed, that
5 this violent crime was committed by the offender
6 against her common-law spouse. It is also an
7 aggravating circumstance that the offender resorted to
8 the use of a knife in this drunken argument with her
9 husband. The use of a knife is indeed troubling
10 because of the prevalence of knife-related crime in
11 recent times in this jurisdiction. It seems that a
12 knife has become the weapon of choice. It seems that
13 not a week goes by without a knife-related crime before
14 our courts. Crown counsel in his submissions says that
15 there has been a number of stabbing incidents in this
16 very community of Fort McPherson in recent times but
17 refers specifically to only the recent Kierstad
18 sentencing.

19 Violent crime is a serious social problem in our
20 communities and has been for many years. The
21 statistics that are published by Statistics Canada, for
22 example, for the three most recent years for which
23 published statistics are available shows that the rate
24 of violent crime in this jurisdiction is consistently
25 five times the national average. In my view, that
26 reality comes into play when a sentencing judge is
27 attempting to carry out the objectives of denunciation

1 and general deterrence.

2 As counsel have stated, denunciation and
3 deterrence are the primary objectives that ought to be
4 achieved by the sentence imposed in a case like this.

5 On the mitigating side, it is to Ms. Dillon's
6 credit that she pleads guilty. However, I note this
7 comes only after a preliminary inquiry and only after a
8 jury trial was, at her request, arranged in her home
9 community. It is regrettable that it is only now, 15
10 months later, that this incident of serious domestic
11 violence is being brought before the court for final
12 disposition.

13 The offender, Ms. Dillon, stated to Hazel Nerysoo,
14 the probation officer who prepared the presentence
15 report, that she is sorry for what she did and that she
16 accepts full responsibility for what she did. She also
17 stated that she does not want to go to gaol for she
18 will worry about the care of her two very young
19 children if she is in gaol. Her husband also
20 apparently does not want her to go to gaol for much the
21 same reason. A real question that comes to my mind is
22 whether the two of them are serious enough about
23 dealing with the alcohol abuse in that household in
24 order to keep her from going to gaol.

25 Defence counsel seeks a conditional sentence under
26 section 742.1 of the Criminal Code. Crown counsel does
27 not oppose the imposition of a sentence to be served in

1 the community. Crown counsel also advises that the
2 RCMP officers in the community agree that Ms. Dillon's
3 sentence could be served in the community. Ms.
4 Nerysoo, in the presentence report, has listed the
5 services that are available in this community as
6 follows:

7 "Services available in the hamlet of Fort
8 McPherson include two alcohol and drug
9 counsellors, a mental health worker, a
10 community counsellor, two social workers, a
11 justice committee, an elders committee and a
12 probation officer. The Department of Justice
13 also has a psychologist in the Inuvik office
14 and family counselling services is provided
15 to the region which includes individual,
16 group and family sessions."

13 Upon consideration of the provisions of section 742.1,
14 I am satisfied that the statutory prerequisites are met
15 and that a conditional sentence is an available option
16 in this case and, therefore, it only remains for me to
17 decide whether to exercise judicial discretion to do so
18 in this case.

19 Taking direction from the Supreme Court of Canada
20 decision in **Proulx**, it is clear that such a sentence
21 would have to contain punitive conditions that restrict
22 Ms. Dillon's liberty in addition to conditions with
23 rehabilitative objectives. This is necessary in this
24 case, of course, to address the objectives of
25 denunciation and deterrence.

26 Quite apart from any strictly punitive conditions,
27 it goes without saying that one particular condition of

1 any community sentence imposed on Ms. Dillon must be
2 that she abstain from the consumption of alcohol and
3 not have any alcohol in the residence she shares with
4 her husband, and it is this condition that is of most
5 concern to me.

6 From my reading of the contents of the presentence
7 report and from the equivocal statements of both
8 counsel on the topic, I glean that it will be very,
9 very difficult for Ms. Dillon to adhere to a no-alcohol
10 condition while serving her sentence in the community
11 and, accordingly, my concern is that imposing a
12 conditional sentence as requested by defence counsel is
13 just setting Ms. Dillon up for failure.

14 She told the probation officer Ms. Nerysoo that
15 she does not want to go to gaol because she cannot bear
16 the thought of being away from her children. Her
17 husband, Mr. Alexie, told defence counsel that he does
18 not want Ms. Dillon to go to gaol because he feels he
19 will be unable to properly care for the children if
20 their mother is in gaol. Surely the possibility or
21 likelihood that Ms. Dillon will indeed go to gaol then
22 is enough of an incentive for the two of them to do
23 something about the alcohol abuse in that home as they
24 told Ms. Nerysoo they want to do.

25 In the end and with more than a little hesitation,
26 I have decided to grant Ms. Dillon's request and impose
27 a conditional sentence. However, I want Ms. Dillon to

1 know, and this she will learn for herself early on,
2 that this community-based sentence will not be easy.
3 It will be far from easy. The conditions I will impose
4 will be onerous and will be difficult for her. She
5 will be closely supervised and she will be watched by
6 the community. It is my sincere hope that she has the
7 ability to get through it and she should probably
8 remind herself every day that tough as it is, it is
9 better for her than being in a gaol in Fort Smith
10 hundreds of miles away from her children and her
11 family.

12 Please stand, Ms. Dillon, and just listen
13 carefully to me. For the crime that you have
14 committed, aggravated assault, contrary to section 268
15 of the Criminal Code, I hereby impose a sentence of
16 imprisonment of 12 months, and I order that you serve
17 that sentence in this community of Fort McPherson,
18 subject to the following conditions:

- 19 1. Keep the peace and be of good behaviour;
- 20 2. Appear before this court when required by the
21 court;
- 22 3. Report to the supervisor within 48 hours and
23 thereafter as required by the supervisor;
- 24 4. Remain within the Northwest Territories unless
25 written permission otherwise is provided by the court
26 or the supervisor;
- 27 5. Notify the supervisor in advance of any change

1 of name or address and promptly notify the supervisor
2 of any change of employment or occupation;

3 6. Take any treatment program or counselling
4 program as directed by the supervisor;

5 7. Abstain from the possession or consumption of
6 alcohol or any illegal drugs;

7 8. You are prohibited from having any alcohol in
8 your residence, house No. 544;

9 9. You are prohibited from being in any place
10 where alcohol is served or being consumed;

11 10. You are to submit to the demand of a police
12 officer for a sample of your blood or breath and you
13 are to allow the police to search your residence at any
14 time for the presence of alcohol;

15 11. During the first three months of your
16 sentence you shall be under house arrest. That is, you
17 shall remain in your residence, house No. 544, except
18 for one three-consecutive-hour period daily between 8
19 a.m. and 8 p.m. as arranged with the supervisor, and
20 except for medical emergencies as approved by the
21 supervisor;

22 12. During the second three-month period of your
23 sentence you will be under house curfew. That is, you
24 shall remain in your residence, house No. 544, from 8
25 p.m. to 8 a.m. except for medical emergencies as
26 approved by the supervisor;

27 13. You shall appear at the door of your

1 residence whenever required to do so by a police
2 officer or the supervisor during the first six months
3 of your sentence;

4 14. During the final six months of your sentence
5 you shall report daily to the RCMP detachment or to the
6 supervisor as arranged with the supervisor; and

7 15. During the final six months of your sentence
8 you shall perform community service work totalling 75
9 hours as directed by the supervisor.

10 Now, Ms. Dillon, as I have said, these conditions
11 will be difficult for you. Do you understand these
12 conditions?

13 THE ACCUSED: Yes.

14 THE COURT: I also want you to understand that
15 if you breach any of these conditions at any time
16 during the 12 months you will be brought before this
17 court and this conditional sentence may be set aside
18 and you may be required to serve the remaining part of
19 your 12-month sentence in gaol in Fort Smith.

20 You are probably aware, Ms. Dillon, that that is
21 precisely what happened in Margaret Kierstad's case
22 recently, so that should be a reminder to you of what
23 can happen if you do not obey these conditions. I will
24 also advise you that if at any time the supervisor
25 feels that there is a need or desire to change any of
26 these conditions, the supervisor can apply to the court
27 to make the change and that also applies to you and to

1 the Crown prosecutor's office.

2 The sentence of 12 months will be followed by a
3 further 12 months of probation. The conditions in the
4 probation order, in addition to the statutory
5 conditions, will be:

6 1. Abstain from the consumption of alcohol;

7 2. Submit to the demand of a police officer for a
8 sample of your blood or breath; and

9 3. Take any treatment program or counselling
10 program as directed by the probation officer.

11 The DNA order and the firearms prohibition order
12 sought by the Crown are granted. There will be no
13 victim fine surcharge.

14 Ms. Dillon, after we adjourn court, it will take
15 the clerk some time to prepare the paperwork. I want
16 you to wait here until that paperwork is completed.
17 The clerk will provide you with copies of the
18 conditional sentence order and the probation order and
19 I am going to ask your lawyer, Mr. Tom Boyd, to review
20 those orders carefully with you and to explain to you
21 again carefully the consequences of any breach of
22 either the conditional sentence order or the probation
23 order, and I wish good luck to you and hope we don't
24 see you back here in court. You can have a seat.

25 Is there anything further, counsel, on this case?

26 Crown?

27 MR. SINCLAIR: No, sir.

1 MR. BOYD: Sir, with respect to condition 11
2 on the conditional sentence order, after court
3 yesterday Ms. Dillon and myself made contact with the
4 health centre. They will apparently hold the ride
5 which will take people in for medical treatment until
6 mid-morning so I wonder if that could be permitted.
7 The order provides that Ms. Nerysoo could approve it
8 but if it was addressed in court then it just won't
9 prevent her from getting in the vehicle. It's more or
10 less just waiting there for her, holding up the others
11 going in.

12 THE COURT: You are saying they are leaving
13 within the hour?

14 MR. BOYD: They are hoping to leave within the
15 hour. They said they would wait for her as late as
16 10:00.

17 THE COURT: I want her to wait until the
18 paperwork is completed. Is this Ms. Nerysoo here?

19 MR. BOYD: Yes.

20 THE COURT: I want her to wait until the
21 paperwork is completed, Mr. Boyd, and after that I am
22 going to rely on Ms. Nerysoo to make those decisions.

23 MR. BOYD: Yes, sir, thank you.

24 THE COURT: We will close court.

25 (AT WHICH TIME THE SENTENCE CONCLUDED)

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

Janet Harder

Janet Harder
Court Reporter