R. v. Manuel, 2004 NWTSC 74

S-1-CR2003000010

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

BENJAMIN ARSENE MANUEL

Transcript of the Reasons for Sentence of The Honourable Justice J.Z. Vertes, at Yellowknife in the Northwest Territories, on October 21st A.D., 2004.

APPEARANCES:

Ms. S. Bond: Counsel for the Crown

Mr. G. Boyd: Counsel for the Accused

Charge under s. 271, s. 266 *Criminal Code of Canada*

THE COURT: The accused has entered pleas of guilty on two charges, one being a sexual assault which occurred on September 1st, 2002 in Fort Good Hope; the other being a common assault which occurred on June 30th, 2004 in Fort Good Hope.

The circumstances of the sexual assault charge are essentially as follows: The victim in that case attended at the home of the accused's father, the accused was there, people were drinking, the victim fell asleep, and she awoke in the morning to find the accused on top of her engaging in sexual intercourse. When she awoke, she tried to fight off the accused who became violent. He hit her and choked her, and the victim suffered bruises and contusions as a result. The accused, when a noise was heard, left the room at which point the victim found help from the accused's father. The incident was reported right away, and the police attended and arrested the accused.

The history of that sexual assault charge was somewhat protracted. There were at least two aborted trials in Fort Good Hope. I say aborted because the Court party travelled there; the Crown witnesses, including the victim, were ready to testify there; and in both cases the trials

were aborted because the Court was unable to select a jury primarily due to the small population of the community and the interrelatedness of prospective jurors to the families of the accused and the victim.

The Court was scheduled to go to another community, a community similar to Fort Good Hope, for the third attempt at the trial in this matter, and just before that took place the accused re-elected and entered a guilty plea to the sexual assault charge.

I have often said that a guilty plea, no matter how late it comes in the day, is worthy of consideration. It is at least a primary indicator of acceptance of responsibility. But I must say the consideration that is to be given to this guilty plea and the mitigating effect of this guilty plea is highly diminished because it is clear that, on at least two occasions, this accused was prepared and ready to go through a trial and to put the victim on trial in their home community.

I do not intend to, nor do I suggest, that the accused should be punished more severely because of that. He had a right to a trial. I simply suggest that the mitigating impact of the guilty plea in this case is not what it would

have been had it come at a much earlier stage in these proceedings.

With respect to the assault charge, one will readily note that that occurred on June 30th, 2004, at a time when this accused was still awaiting trial on the sexual assault charge. He was therefore under Court process to keep the peace and be of good behavior. That in itself is an aggravating factor.

The facts of that charge, simply put, are that the accused was seen dragging or carrying a woman along the street in Fort Good Hope. The woman, being his former common-law spouse, was intoxicated. He claims that he was trying to carry her home but he was drinking as well. Various bystanders and eye witnesses saw this and one of them, the victim in the assault charge, a Melanie Tobac, attempted to intervene and for her efforts the accused struck her three times in the face.

The accused is 27 years old. He has a Grade 11 education. He is the father of two children. He was raised by his grandparents. There have been some letters of support provided to me from the Chief of Colville Lake, from a social worker in Fort Good Hope, and from his grandparents, talking about how they support him, about how

they can put him to good work, about how they depend on him.

I have no doubt that his elderly grandparents depend on him. I have no doubt that he can be a support to them. I have no doubt that a young and healthy male like himself can be an asset to a community and can do many good things in a community. But I must say those professions of faith and support for this accused must be counter-balanced by what the record shows.

This man's criminal record reveals that, simply as an adult since 1996, he has been convicted 20 times. Most of those are for property-related offences - break and enters, thefts, that sort of thing - but there are three assault convictions on that record, all indicating spousal assault, which itself is an aggravating factor. He has served periods of probation and he has served lengthy jail periods, the most recent of which was a total sentence of twenty and a half months imposed in February of 2003 on four charges - break enter and theft, assault, and two breaches of his bail conditions. And all of this does not count a very lengthy record as a young offender as well.

What all this shows me, in essence, is what

is summed up by what has been provided to me as a report from a family violence prevention program that the accused attended for a month earlier this year while he was incarcerated.

In reading that report, I am drawn to these basic conclusions. He has a personality that is impulsive, abusive, prone to violence and he lacks empathy for others. What is interesting is that he, I think, recognizes some of that but yet even this report shows that there was minimal progress in treatment.

Now, many of his problems are due to what appears to be a long-standing alcohol abuse issue. And I note that in his personal background, as his counsel outlined, there was evidence of violence and alcohol abuse in his family. And, indeed, some of these factors can be considered to be almost systemic factors in many of our aboriginal communities. Problems of alcohol abuse, family violence, poverty, hardship, lack of education and opportunity are problems that are endemic, unfortunately, in our aboriginal communities.

Be that as it may, I think that the accused himself showed some insight when he spoke just before sentencing when he said that he has only himself to blame. Many people, unfortunately,

grow up in these situations. Many of them suffer through hardships. But not many of them develop a criminal history such as this accused has at such a young age.

It's now that he says that he is sorry for the victim, that he is sorry for the hurt that he has caused to his family and his community. I give him credit for those comments. I take those as signs of remorse but frankly it may be too little too late. And I can say this: With his personal history, and with the facts of the sexual assault charge in particular, if this matter had gone to trial and he had been convicted, I have no doubt that he would be facing a sentence now in the range of four, five, or even six years in the penitentiary. As it is, the only mitigating factor in his favour is the fact that he finally changed his plea to one of guilty and that he made at least these expressions of remorse.

While I note those systemic factors that defence counsel has pointed out, and I take those into consideration as I must not only because this offender is an aboriginal offender but because I must in the case of every offender, it seems to me that there is nothing to suggest that those systemic factors played a part in this

particular crime. It was a crime of opportunity and a crime of violence, and here I am referring to the sexual assault charge. He took advantage of a sleeping woman, who was helpless, in his father's home and then when she awoke he assaulted her some more and caused her injury. That is a very aggravating factor.

As counsel have recognized, the case law in this jurisdiction has been consistent for a long time with respect to a sexual assault charge such as the one that this accused has been convicted of. The range of sentence for an offence of sexual assault involving non-consensual intercourse with a woman asleep or unconscious, assuming an offender of previous good character who pleads guilty and expresses remorse, is two to three years imprisonment. That is the range, and certainly the use of such a range is a valid exercise in the effort to avoid disparity in sentencing - similar offenders who commit similar crimes should be treated similarly. That is a basic principle of sentencing.

But of course in terms of imposing a sentence that is just for this particular offender and this particular offence, one then must look at and apply to this range any aggravating and mitigating circumstances.

As I said, the mitigating circumstances are the accused's plea of guilty and his expressions of remorse coming here today. Other than that, I find no mitigating circumstances.

The aggravating circumstances are the circumstances themselves of the offence, the additional violence caused to the victim besides the extreme violence caused by the sexual interference. Another aggravating circumstance is his criminal record. That says more than anything about his character. And obviously because of that, emphasis must be placed on the principles of deterrence and denunciation.

Crown counsel has recommended a sentence in the range of two and a half to three years. Defence counsel has recommended a global sentence of two to two and a half years. There is not much difference obviously between the two submissions. I certainly think counsel has said everything that he can possibly say on behalf his client. I thank him for those submissions.

But if the range for this type of offence is two to three years on a guilty plea, assuming a person of good character who truly expresses remorse, then I must say that in the circumstances of this case the only appropriate sentence is at the high end of that range.

With respect to the assault charge, as noted by Crown counsel the accused has been in custody for three and a half months on that charge. If I take into account the usual principle of crediting that time at two-to-one, that would be the equivalent of a seven month sentence. In my opinion, I think that a seven month sentence would be quite appropriate for this assault charge. Even though it was brief, it was momentary, it was part of a pattern of impulsive, violent behaviour and in my opinion it could well deserve a sentence of seven months. So in that sense I will accept Crown counsel's submission that an appropriate sentence will be time served.

Stand up, Mr. Manuel.

Mr. Manuel, as I indicated I listened to what you had to say and I took those comments as sincere ones. I believe you meant what you said. You are still only 27 years old. When you come out from jail, you will have your entire life ahead of you. And so now it is up to you, up to you as to what you will do with that life, what sort of father you will be to your children, what sort of man you will be in the community, and I wish you luck.

The sentence on the sexual assault charge will be one of three years imprisonment. The

sentence on the common assault charge will be one day, in effect time served, deemed to have been served by his appearance in court today.

The total sentence, Mr. Manuel, is three years imprisonment. You can have a seat.

There will be an order requiring the giving of a sample for DNA databank purposes and the order can be submitted in due course.

There will also be an order prohibiting the accused from having in his possession any firearms, ammunition, or explosives for a period of no less than ten years from the date of his release. And the appropriate order can be prepared and submitted to me for my signature.

Is there anything else? Under the circumstances, there will be no Victim of Crime fine surcharge. Is there anything else, Ms. Bond?

MS. BOND: No, sir.

MR. BOYD: Nothing further, sir.

THE COURT: Then once again thank you for your submissions, counsel. We will adjourn until 2 o'clock.

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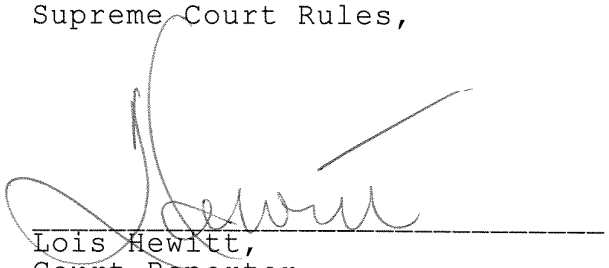
accurate transcript pursuant
to Rules 723 and 724 of the
Supreme Court Rules,



Lois Hewitt,
Court Reporter